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TRANSCRIPT OF RECORD

Pet. 166 85-796 Nos. 2 & 3C

Supreme Court of the United States

OCTOBER TERM, 1937

No. 566

GUARANTY TRUST COMPANY OF NEW YORK,
PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 9, 1937.

CERTIORARI GRANTED DECEMBER 13, 1937.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellant,

against

GUARANTY TRUST COMPANY OF NEW YORK, Defendant-Appellee

STATEMENT PURSUANT TO RULE XIII

This action at law, for the recovery of the sum of $4,976,722.78 with interest from certain dates alleged to remain on deposit with the defendant Trust Company to the account of the State of Russia, and assigned by the Soviet Government to the United States of America in November, 1933, was instituted on September 21, 1934 by the due service of a summons and complaint upon the defendant-appellee.

After a contested motion an opinion dated March 28, 1935 was handed down by Judge Caffey granting defendant's motion to take the depositions of Boris Bakhmeteff and Serge Ughet, and an order based thereon dated April 30, 1935 was signed allowing depositions of Boris Bakhmeteff and Serge Ughet to be taken by the defendant, and such depositions were taken. Thereafter, an opinion of Judge Caffey dated June 13, 1935 sustaining the referee's ruling denying the claim of privilege of Bakhmeteff was handed down. The de-
[fol. 2] fendant-appellee on October 21, 1935 served on the plaintiff-appellant a notice of motion supported by the aforementioned depositions, and affidavits and exhibits, for a judgment dismissing the complaint, on the ground that the cause of action alleged therein did not accrue within the time limited by law for the commencement of an action thereon.

After several adjournments, on October 5, 1936 the motion to dismiss was brought on for hearing before the Honorable Francis G. Caffey. Judge Caffey on October 13, 1936 handed down his opinion on said motion, and on November 2, 1936, signed an order based thereon granting said motion and dismissing the complaint. Also under date of November 2, 1936, Judge Caffey signed an order denying the motion of the United States to strike out the depositions of Bakhmeteff

and Ughet. On November 6, 1936 judgment was entered dismissing the complaint on the merits.

On February 3, 1937 an appeal was allowed by the order of Honorable Robert P. Patterson, and a citation issued on the same date returnable March 5, 1937. On February 4, 1937, said order and petition for appeal, and assignment of errors were filed in the office of the Clerk of the said District Court.

On the same date said citation was duly served and filed with the Clerk of the said District Court.

There has been no change of parties since the commencement of this action.

[fol. 3] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

SUMMONS

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 21st day of September, A. D. 1934.

Charles Weiser, Clerk. (Seal.)

Martin Conboy, Plaintiff's Attorney, U. S. Attorney, Office and Post Office Address: U. S. Attorney, U. S. Courthouse and P. O. Building, Borough of Manhattan, New York City.

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT

Plaintiff, by its attorney, Martin Conboy, United States Attorney for the Southern District of New York, complaining of the defendant above named, respectfully shows to this Court and alleges, on information and belief:

I. That at all times hereinafter mentioned plaintiff was and still is a corporation sovereign.

II. That at all times hereinafter mentioned defendant was and still is a corporation organized and existing under the Banking Laws of the State of New York, engaged in the business of banking, and having its principal office and place of business in the Borough of Manhattan, City, State and Southern District of New York.

III. That at all times hereinafter mentioned the Government of the State of Russia was and still is a corporation sovereign.

[fol. 5] IV. That on or about July 15, 1916, the Government of the State of Russia opened a deposit account with the defendant in New York.

V. That from December 12, 1917, to and including August 23, 1934, and from said latter date to the present, there remained in said deposit account owing by said defendant, the sum of Four Million, Nine Hundred Seventy-Six Thousand, Seven Hundred and Twenty-Two Dollars and Seventy-eight Cents ($4,976,722.78), together with accrued bank interest from December 12, 1917.

VI. That on November 16, 1933, the Government of the State of Russia assigned to the plaintiff all of its right, title and interest in and to the amount on deposit with the defendant in the aforesaid sum of Four Million, Nine Hundred Seventy Six Thousand, Seven Hundred Twenty-two Dollars and Seventy-eight Cents ($4,976,722.78), and accrued bank interest, being the amount referred to in the preceding paragraph of this complaint, and since November 16, 1933, the plaintiff has been and now is the owner of all right, title and interest in and to the aforesaid deposit account.

VII. That on or about August 23, 1934, the plaintiff duly demanded payment to it of the sum of Four Million, Nine Hundred Seventy-six Thousand, Seven Hundred and Twenty-two Dollars and Seventy-eight cents ($4,976,722.78), being the amount remaining on deposit with the defendant as alleged in the fifth paragraph of this complaint, together with accrued bank interest but the defendant failed, neg-
[fol. 6] lected and refused, and still fails, neglects and refuses to pay to the plaintiff the said amount or any part thereof.

Wherefore, plaintiff demands judgment against the defendant for Four Million, Nine Hundred Seventy-six Thousand, Seven Hundred Twenty-two Dollars, Seventy-eight Cents ($4,976,722.78), with accrued bank interest on said sum from December 12, 1917 to August 23, 1934 and with interest on these sums at the rate of Six (6%) per centum per annum from August 23, 1934, together with the costs and disbursements of this action.

Martin Conboy, United States Attorney for the Southern District of New York, Attorney for Plaintiff, Office & P. O. Address, U. S. Courts and P. O. Building, Borough of Manhattan, City of New York.

[fols. 7-8] *Duly sworn to by Leon E. Spencer. Jurat omitted in printing.*

[fol. 9] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION TO DISMISS

SIR:

Please Take Notice that upon the summons and complaint, upon the order herein of Hon. Francis G. Caffey, United States District Judge, made April 30, 1935, upon the annexed depositions of

1. Boris Bakhmeteff, verified September 19, 1935, and

2. Serge Ughet, verified September 19, 1935;

upon the annexed affidavits of

3. Dimitry G. Ter-Assatouroff, verified October 7, 1935

4. Nicholas S. Karinsky, verified October 7, 1935

5. Harold Stanley, verified October 18, 1935

[fol. 10] 6. Charles Sargent, verified October 18, 1935

7. Stuart H. Patterson, verified October 17, 1935

8. William C. Cannon, verified October 17, 1935

9. Samuel W. Reyburn, verified September 25, 1935

10. George B. Link, verified October 18, 1935

11. George J. Kenny, verified October 10, 1935

12. Rodney Dean, verified October 15, 1935

13. Arthur B. Hatcher, verified September 25, 1935

14. C. A. McKeon, verified October 16, 1935, and

15. Arthur J. Carey, verified October 9, 1935;

and upon the affidavits heretofore filed herein of

16. Grayson M.-P. Murphy, verified February 25, 1935, and

17. Eugene W. Stetson, verified February 25, 1935,

together with Defendant's Exhibits for Identification 1, 2, 3, 5, and 6, and Exhibits 3A, 8, 9, 10, 11, 12, 13, 14, 15, 16, 16A, 17, 18, 19, 20, 21, 22 and 23 described in and attached to [fol. 11] said depositions and affidavits respectively, the undersigned will pursuant to the Conformity Act 28 USC § 724, New York Civil Practice Act § 307, and Rules 107 and 120 of the Rules of Civil Practice of the State of New York, and other provisions of law, move at a term of this court for the hearing of motions to be held at the Old Post Office and Federal Building, Borough of Manhattan, New York, N. Y., on November 8, 1935, at 10:30 a. m. or as soon thereafter as counsel can be heard for judgment dismissing the complaint on the ground that the cause of action alleged therein did not accrue within the time limited by law for the commencement of an action thereon, and for such other and further relief as may be just.

Please Further Take Notice that pursuant to Rule 64 of the Rules of Civil Practice of the State of New York, the undersigned require that any answering affidavits to be used

upon the above-noticed motion be served at least five days before the return day.

Dated, New York, N. Y., October 21, 1935.

Yours, etc., Davis, Polk, Wardwell, Gardiner & Reed, Attorneys for Defendant, Office and Post Office Address: 15 Broad Street, Borough of Manhattan, New York, N. Y.

To: Hon. F. W. H. Adams, United States Attorney, Old Post Office & Federal Building, Borough of Manhattan, New York, N. Y.

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING TESTIMONY OF UGHET AND BAKHMETEFF TO BE TAKEN—April 30, 1935

The above-named defendant having duly moved for an order directing that the testimony of Boris Bakhmeteff and Serge Ughet be taken herein by deposition on behalf of the defendant for use upon a motion subsequently to be made by the defendant to dismiss the complaint on the ground that the cause of action alleged therein did not accrue within the time limited by law for the commencement of an action thereon, and said motion having duly come on to be heard,

Now, on reading and filing the affidavits of J. Paul Huber verified December 14, 1934, of Ralph M. Carson verified February 1, 1935, of Grayson M-P. Murphy verified February 25, 1935, of Eugene W. Stetson verified February 25, [fol. 13] 1935, of Frank L. Polk verified March 25, 1935, and of Ralph M. Carson verified March 26, 1935, all in support of the motion, and after hearing John W. Davis, Esq., attorney for the defendant, in support of said motion, and Martin Conboy, Esq., the United States Attorney, in opposition thereto, and due deliberation having been had,

It is, upon motion of Davis Polk Wardwell Gardiner & Reed, attorneys for the defendant, and on filing the opinion of the Court,

Ordered that Harold Harper, Esquire, be and he hereby is appointed a referee to take the depositions of the said Boris Bakhmeteff and the said Serge Ughet in the manner prescribed by Rule 120 of the Rules of Civil Practice of the State of New York, with respect to all matters or facts

within the knowledge of the said persons showing or tending to show that a cause of action covering the matters alleged in the complaint accrued in favor of the State of Russia more than six years before the commencement of this action, provided that neither of said depositions nor any part thereof shall be admissible upon the trial of this action; and it is

Further Ordered that the said referee be and he hereby is authorized and directed to proceed with the taking of said depositions forthwith, at such place or places within the Borough of Manhattan, New York, N. Y., as the said referee shall fix and at such times convenient to the said referee as shall be designated by notice to be served by defendant's attorneys upon the United States Attorney not less than two days in advance, subject to such adjournments as the referee may direct

Francis G. Caffey, U. S. D. J. C. W.

[fol. 14] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF REFEREE

I, Harold Harper, the Referee named in the order of this Court dated April 30, 1935, made by Honorable Francis G. Caffey, United States District Judge, for the taking of the depositions of Boris Bakhmeteff and Serge Ughet in the manner prescribed by Rule 120 of the Rules of Civil Practice of the State of New York with respect to all matters or facts within the knowledge of the said persons showing or tending to show that a cause of action covering the matters alleged in the complaint in the above-entitled action accrued in favor of the State of Russia more than six years before the commencement of said action,

Certify that the depositions of Boris Bakhmeteff and Serge Ughet were duly taken before me at my office No. 70 Pine Street, New York, N. Y., on May 9, May 10, August 8 and September 17, 1935; that prior to the taking of said depositions I took and subscribed the oath of office in the manner prescribed by New York Civil Practice Act § 126; [fol. 15] that the minutes attached to this certificate are a true and correct record of the appearances and proceedings

had before me and of the testimony of the witnesses; that the ink corrections in said minutes marked with my initials are corrections made by the witnesses in their testimony before they subscribed and swore to the same; and that on the seven defendants' exhibits marked for identification on the said depositions and described in the said minutes, I have placed my initials together with the date on which this certificate is made.

Dated, New York, N. Y., October 7, 1935.

Harold Harper.

STATE OF NEW YORK,
County of New York, ss:

On the 7th day of October, 1935, before me personally appeared Harold Harper, to me known and known to me to be the individual described in and who executed the foregoing certificate, and acknowledged to me that he executed the same.

Helen Werner, Notary Public, Bronx County No. 60. Register's No. 61W37. Certificate filed in New York County. Clerk's No. 391, Register's No. 7W235. Commission Expires March 30, 1937.

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

OATH OF REFEREE

I, Harold Harper, the referee appointed by an order of this Court, made and entered in the above-entitled action and bearing date April 30, 1935, to take the depositions of Boris Bakhmeteff and Serge Ughet with respect to certain matters described in said order, do solemnly swear that I will faithfully, honestly and impartially discharge the trust committed to me by said order.

Harold Harper.

Sworn to before me this 8th day of May, 1935. Helen Werner, Notary Public, Bronx County No. 60. Register's No. 61W37. Certificate filed in New York County. Clerk's No. 391, Register's No. 7W235. Commission Expires March 30, 1937.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEPOSITION OF SERGE UGHET

No. 70 Pine Street, New York City,
May 9, 1935, 10:30 A. M.

Before Harold Harper, Esq., Referee

Appearances:

Hon. Martin Conboy, United States Attorney, Leon E. Spencer, Esq., Assistant United States Attorney; Henry Munroe, Esq., United States Treasury Department, Washington, D. C., for the Plaintiff.

Davis, Polk, Wardwell, Gardiner & Reed, Esqs., Ralph M. Carson, Esq., of counsel, Attorneys for Defendant.

[fol. 18] The Referee states that he has taken and subscribed the oath of office, as required by Section 126 of the Civil Practice Act.

It is Stipulated that the fees of the Referee for time occupied in the hearing of this reference be fixed at $35 an hour, to be paid by the defendant, Guaranty Trust Company of New York.

(Serge Ughet appeared to testify, pursuant to subpœna.)

(Adjourned at 10:45 A. M., at the request of the United States Attorney, until 2:30 P. M.)

Afternoon Session

May 9, 1935, 2:30 P. M.

Before Harold Harper, Esq., Referee

Appearances:

Hon. Martin Conboy, Leon E. Spencer, Esq., Henry Munroe, Esq., Ralph M. Carson, Esq.

Mr. Carson: Shall we call this the deposition of Mr. Serge Ughet, taken pursuant to order of Hon. Francis G. Caffey,

[fol. 19] United States District Judge, dated April 30, 1935?

Mr. Conboy: I think there is a preliminary matter that I call to the attention of the Court and counsel at this time. It has just recently been brought to my attention that Mr. Ughet was employed in a capacity that made him a part of the diplomatic representation of the Russian Government in this country at the time that the matters about which he is to be interrogated took place, and, if that be so, it is my understanding of principles of International Law that there can be no examination of him with respect to matters that came to his attention while he was acting in the capacity of one connected with the representation of a foreign government.

This is something that, it seems to me, the United States is interested in, because I represent a sovereign government, too, and I think that we would object to any attempt on the part of anyone to examine one of our representatives with regard to matters that came within his knowledge or to his attention during the time while he was employed in that capacity. It seems to me, therefore, that an examination of either Mr. Ughet or Mr. Bakhmeteff, the other proposed witness, is improper for that reason.

Mr. Carson: May I point out two things, Mr. Referee, preliminarily? First, that this objection is one which should have been raised in opposition to, and I think was determined by the determination of the motion itself, in that Mr. Ughet's status was fully disclosed in the moving papers. Second, it would seem to me, if there were an objection of [fol. 20] this character, it could not be raised by the United States, not being the sovereign at interest.

Mr. Conboy: With respect to the first objection, it does not seem to me that it was our duty to raise it at the time the application was made for the examination of witnesses, because the sole question for the Court to determine at that time was whether the provisions of the Civil Practice Act with regard to the taking of depositions in support of a proposed motion was comprised within the conformatory rule, not as to the quality. It was not the proper time to raise objection as to the quality of the witness himself. That is more properly raised at the time that the testimony of the witness is proposed to be taken, not at the time of the application made for the examination of a witness

under the provisions of the Civil Practice Act of this State.

With respect to the second objection, the United States is an assignee, and it is my understanding that an assignee, under a case that was decided by the Court of Appeals of this State in 69 N. Y., is a proper party to raise the objection.

The Referee: The general rule that you invoke is novel, so far as the Referee is concerned. I will take the evidence subject to a motion to strike. I shall be glad to have authorities on it later, but I think I will not hold up the proceedings. The objection will be overruled.

Mr. Conboy: Exception.

The Referee: An exception to the United States.

[fol. 21] SERGE UGHET, called as a witness on behalf of the defendant, being first duly sworn by the Referee, testified as follows:

Direct examination.

By Mr. Carson:

Q. Mr. Ughet, you were in 1917 Financial Attache to the Russian Embassy in the United States, were you?

A. Yes, beginning from April, 1917, I believe.

Q. How long did you continue as such Financial Attache?

A. Up to November 16, 1933.

Q. Under whom, as Russian Ambassador, did you serve as Financial Attache?

A. First, under Mr. George Bakhmeteff, and later on under his successor, Mr. Boris Bakhmeteff.

Q. Do you recall approximately when Mr. Boris Bakhmeteff resigned as Russian Ambassador to the United States?

A. On June 30, 1922.

Q. Thereafter, were you the sole representative of the State of Russia or Government of Russia in this country?

A. Yes, sir.

Q. Until the date you named?

A. Yes, sir.

Q. Are you the same Serge Ughet as is mentioned in the action in the United States Court, entitled "State of Russia vs. National City Bank and Bankers Trust Company"?

A. Yes.

Q. Are you the same Serge Ughet as is mentioned in the action in the United States Court entitled "State of Russia vs. Lehigh Valley Railroad Company"?

A. Yes.

Q. About when was this latter action commenced?

A. I recall soon after the November revolution in 1917. Probably it was in 1918 when it started. At any rate, some legal moves were made at the time.

[fol. 22] Q. What were your duties generally as Financial Attache to the Russian Embassy here?

A. To supervise all financial matters of interest to the Russian Government.

Q. In that capacity, were you familiar with a certain account kept with the Guaranty Trust Company of New York, the defendant here, in New York, under the name of the Russian Government or a department of the Russian Government?

A. You mean with the Guaranty Trust Company?

Q. Yes, with the Guaranty Trust Company.

A. Yes, there was.

Q. Do you remember the exact title of that account?

A. I believe it was in French, and the term was "Ministere des Finances, Section Etrangere".

Mr. Conboy: That is the spelling of the account itself?

Mr. Carson: Yes, sir.

Q. Do you recall approximately what was the balance in that account at the end of 1917?

A. Almost $5,000,000—$4,900,000; something like that.

Q. After the revolution in Russia of November, 1917, I understand that you continued to perform your functions that you have described; is that correct?

A. Yes.

Q. Did you continue to draw on and dispose of the funds of the Russian Government in this country for its requirements in the United States?

A. Yes.

Q. In that connection, did you make payments by way of service on a $50,000,000 credit which the Russian Government had made in the United States?

A. $50,000,000 credit, yes.

[fol. 23] Q. Did you draw on Russian Government funds here for the payment of obligations to the United States Government?

A. Yes.

Q. Were you, in 1918, acquainted with Mr. Frank L. Polk?

A. Yes.

Q. What was his position?

A. Counselor of the State Department.

Q. Were you acquainted with Mr. Charles H. Sabin?

A. Yes.

Q. And you knew him as President of the Guaranty Trust Company, did you?

A. Yes.

Q. Now, did you have a conference with Mr. Polk and Mr. Sabin with respect to this Ministere des Finances, Section Etrangere account which you have described, during the year 1918 at any time, either in Washington or in New York? A. It was in Washington, and it was either in December, 1917, or in January, 1918.

Q. Who were present besides yourself?

A. Mr. Frank L. Polk and Mr. Charles H. Sabin.

Q. Now, was anything said at that conference with reference to the drawing on the Ministry of Finance account by the Russian Ambassador or by yourself?

Mr. Conboy: That I object to upon the ground that whatever knowledge the witness has in this connection was acquired by him in the capacity of diplomatic representative of a foreign government, and is therefore privileged. The witness is not permitted to testify to the same without the waiver of his government.

The Referee: The objection, as far as it rests upon the [fol. 24] ground of privilege, is overruled. Is that the only objection you now urge?

Mr. Conboy: I do not recall what other defects there are. Will you read the question, please?

(Last question repeated.)

Mr. Carson: I will ask for a "yes" or "no" answer to that question, and I will later ask for details.

The Referee: It is now limited to a "yes" or "no" answer, Mr. Conboy.

Mr. Conboy: Exception to the ruling of the Referee.

By Mr. Carson:

Q. You may answer "yes" or "no" to that question. Do you understand the question?

A. Yes, I do, but, your Honor, may I ask you for a ruling, because that is a question to which I couldn't answer "yes" or "no", because of the form in which it is put to me, was not discussed at the time at this conference.

Mr. Carson: I will take that as an answer.

The Referee: Take that as an answer and proceed with the examination.

Q. Mr. Ughet, will you repeat anything said at that conference by Mr. Sabin or by yourself or by Mr. Polk with reference to the payment of the Ministry of Finance account by Guaranty Trust Company to or upon the orders of the Russian Government?

(Discussion off the record.)

By Mr. Carson:

Q. Do you remember the question?

A. Yes.

[fol. 25] Q. Answer it, please.

A. At this conference Mr. Polk asked Mr. Sabin whether the Guaranty Trust Company would consent to release this fund to the jurisdiction of the Russian Embassy, and Mr. Sabin pointed out that because the Guaranty Trust Company was having certain claims against Russia in consequence of November events of 1917, that the Guaranty Trust Company, therefore, was not feeling at liberty to release this fund to the jurisdiction of the Russian Embassy.

Q. You heard that statement?

A. It was in my presence, yes.

Q. Was anything else said by you, Mr. Polk or by Mr. Sabin on the subject, so far as you remember?

A. I must confess, no. That is to say, that is the general gist of the conference which I memorized. I couldn't say just exactly the words which were said at the time.

Q. Other things were said, but you cannot remember them, and you now stated the substance?

A. I remember the conference was a rather short one.

Q. Do you recall that the $50,000,000 credit of the Russian Government in this country, extended by certain American banks, matured in June, 1919?

A. Yes.

Q. What steps, if any, did you take on behalf of the Russian Government to meet that credit at maturity, in a general way?

A. To meet this credit at maturity—in fact, no steps were taken because at the time, to meet a payment of $50,000,000 was beyond, so to say, any human means.

Q. Do you recall when the last installment of interest fell due on that credit?

A. What do you mean by "last installment?"

[fol. 26] Q. The last increment of interest which would be payable on that credit, pursuant to the contract, assuming that the principal was paid at maturity.

A. You see, I remember that the interest was due on the 10th of January and 10th of July of every year, but what was the last installment, the 10th of January, 1919, or the 10th of July, 1919, that I don't remember. I believe it was the 10th of July, 1919, that the last payment was coming due.

Q. But you do recall there was an installment of interest on July 10, 1919?

A. Yes.

Q. Did you take any steps on behalf of the Russian Government to meet that liability?

A. Yes.

Q. Without stating what was said, will you please state whether you discussed the subject with the State Department in Washington before July, 1919?

A. I remember having discussed this matter with the United States Government, but whether it was with the Treasury Department or State Department, that I couldn't tell you. At any rate, I believe it was rather with the Treasury Department, though, perhaps, it was with the State Department, too, because at this specific time I was acting in a double capacity, because I was Financial Attache and I was Charge d'Affaires, so it may so happen that technically, as Charge d'Affaires, I was taking it up with the State Department, and as Financial Attache, with the Treasury Department.

Q. Mr. Bakhmeteff was abroad at that time, was he?

A. Yes.

Q. I find in the report in the Lehigh Valley case, a copy of a certificate from Mr. Polk, which I trust Mr. Conboy will let me read, and which states that since December 3, [fol. 27] 1918, you were Charge d'Affaires in this country; is that correct?

A. Yes, up to August 1, 1919, I believe.

Q. Now, I show you copy of a letter purporting to have been written by Mr. Polk to Charles H. Sabin at the Guaranty Trust Company, dated June 4, 1919, and ask you to examine that and state whether that refreshes your memory with respect to any conference with the State Department affecting the last installment of interest on the loan in question.

A. Yes, I do. That is exactly to what I was referring that I did not remember, whether it was with the State Department or Treasury Department that negotiations were taking place.

Q. Will you tell me whether or not the first paragraph of that letter refreshes your memory, and whether you can say that that constitutes the substance of a conversation which you had with Mr. Polk on that subject?

Mr. Conboy: I object to the witness characterizing it.
The Referee: Sustained.

Q. Refreshing your memory from the paper I have shown you, will you state what was the substance of the conversation that you had with Mr. Polk on that subject, and about when it took place?

Mr. Conboy: I object to that.
The Referee: Sustained. I take it your point is that counsel has not exhausted the witness's recollection.
Mr. Conboy: That is one point.
[fol. 28] The Referee: I will sustain it on that ground.

Q. Mr. Ughet, independently of that paper, do you have any recollection as to any conversation with Mr. Polk or anyone in the State Department in or about the month of May or June, 1919, with respect to the use of the account with the Guaranty Trust Company here involved to make payments on this $50,000,000 credit?

A. Yes. I would only state broadly there were discussions in Washington, because I couldn't say definitely whether they were with the Treasury Department or State Department, but at any rate they were with one of these two Government departments.

Q. State what was said by you and what was said by the Government department, to the best of your recollection.

Mr. Conboy: I certainly object to that.

The Referee: Sustained.

Mr. Carson: On what ground, Mr. Conboy?

Mr. Conboy: The objection was sustained.

The Referee: I think it is fairly apparent that conversation with one man or another is never competent.

Q. You cannot recall precisely with whom you had any conversation on that subject?

A. No.

Q. Will you state whether this paper I hand you, directing your attention to the first paragraph, refreshes your memory as to the person with whom you had the conversation?

A. I must admit not.

[fol. 29] Q. It does not refresh your memory at all?

A. No.

Q. Do you recall any conversation you had with any person in the State Department with respect to the use of the account with the Guaranty Trust Company?

Mr. Conboy: Same objection.

Q. (Cont'd.) For payment of this $50,000,000 credit in or about May or June, 1919, irrespective of whether you know his name?

The Referee: Please read the question.

(Last question repeated.)

The Referee: The answer will be limited to "yes" or "no." Overruled.

Mr. Conboy: Exception.

A. Your Honor, may I again give a qualified answer that it was with the State or Treasury Department. That I couldn't say in an affirmative way. Specifically that it was with the State Department, I couldn't say.

The Referee: That would not be an answer to this particular question. I take it your answer to this question is "no," that you cannot recollect?

The Witness: Then it is "no."

Q. Will you state in a general way what you did on behalf of the Government of Russia with respect to making

or meeting the interest liability on this $50,000,000 credit [fol. 30] which, as you have stated, fell due July 10, 1919?

A. I remember having brought this matter to the attention of the United States Government, either to the State——

Mr. Conboy: Excuse me a second, please. Let me have that question read.

(Last question repeated.)

Mr. Conboy: I can see that that does not fall within the issues of this case or the proposed defense in support of which this deposition is intended to be taken. I cannot conceive that it is.

The Referee: Supposing we let Mr. Carson explain its competency.

Mr. Carson: Mr. Referee, this testimony will show that the witness did certain acts on behalf of the State of Russia with respect to getting funds to pay this interest installment, that in so doing he approached the Guaranty Trust Company and requested the use of those funds, and was given a certain answer which will be offered in evidence. I am introducing the subject——

The Referee: Why not go specifically to this transaction with the Guaranty? Isn't that all that is material?

Mr. Carson: That is all I am asking about.

The Referee: The question of raising funds from some other source, for example.

Mr. Carson: If your Honor will listen to the question—will you read the question, Mr. Reporter?

[fol. 31] (Last question repeated.)

Mr. Carson: I apologize. May I add to the question "in so far as the account with Guaranty Trust Company was concerned"?

By Mr. Carson:

Q. Do you understand the question now?

The Referee: Is there objection to this question?

Mr. Conboy: Oh, yes.

The Referee: I sustain the objection as to the form of the question. You will have to ask, step by step, I think, what you want, Mr. Carson.

Q. After your conference in Washington which you have testified about generally, with respect to meeting payments on this $50,000,000 credit, did you have any conferences in New York with anybody on that subject?

Mr. Conboy: That I object to.

The Referee: Sustained.

Q. I show you a document dated June 13, 1919, purporting to be a letter written by yourself to the National City Bank, and ask you if you signed and delivered the original to the National City Bank?

Mr. Conboy: Is that a copy or an original?

Mr. Carson: A copy. I said "purporting to be a copy."

[fol. 32] Mr. Conboy: I object to it upon the ground it is immaterial and irrelevant whether he sent any letter to the National City Bank, or did not send it to the National City Bank.

The Referee: I think that is premature. I will overrule the objection to this question.

A. Your Honor, may I ask for a ruling?

The Referee: Surely.

The Witness: You see, to my memory, this letter was addressed by me to the National City Bank, and, at the request of the National City Bank, it was withdrawn by me.

Mr. Carson: That, I take it, will be an answer.

The Referee: That is an answer to your question, but he wishes to predicate some question on that to me.

The Witness: Yes, because, at the request of the National City Bank, subsequently perhaps, even dated the same date, I wrote a letter more or less on those same lines to the Protective Committee which was formed at the time for those 6½ per cent participation certificates.

The Referee: I think we had better limit ourselves. I do not know yet what use counsel intends to make of the letter. We will have to wait and see.

Mr. Carson: On that statement I cannot offer it in evidence.

The Referee: It is not in the record, yet, and it may never be.

[fol. 33] By Mr. Carson:

Q. I understand, Mr. Ughet, you did write a letter to the National City Bank with respect to this $50,000,000

credit on June 13, 1919, and you subsequently withdrew the letter; is that correct?

A. The bank asked me to withdraw it.

Q. You had a conference with the National City Bank on the subject?

A. Yes, or a telephone call.

Q. You subsequently wrote a letter on the same subject addressed to whom?

A. I think it was to Mr. Fulton, who was the chairman of the protective Committee of Bondholders, or certificate holders, of the 6½ per cent loan.

The Referee: Imperial Russian Government Bonds?

The Witness: Yes.

Q. I hand you purported copy of letter purported to have been sent by you, dated July 1, 1919, to John H. Fulton, Chairman of the Protective Committee for the 6½ per cent $50,000,000 credit, in care of National City Bank, and ask you if you signed and sent the original of which that purports to be a copy?

Mr. Conboy: I object to the question on the ground it is irrelevant and immaterial, whether he sent such a letter or not.

A. Yes, I believe substantially that is the letter I sent to Mr. Fulton.

(Discussion off the record.)

[fol. 34] Mr. Conboy: I move to strike that out upon the ground that is not the best evidence, and I renew my motion again to the admissibility of any such letter.

The Referee: I am not passing on that. The motion to strike the answer is denied, with an exception to the United States.

Q. You have read this copy of letter dated July 1, 1919, that I showed you?

A. Yes, I glanced over it.

Q. Will you state whether or not it is, to the best of your recollection, a true copy of a letter which you signed and delivered?

Mr. Conboy: I object.

The Referee: Sustained, as already covered.

Mr. Carson: I offer this letter which the witness has identified, in evidence.

Mr. Conboy: I object to it on the ground that it is——

The Referee: Are you familiar with its contents?

Mr. Conboy: No, sir, I am not.

The Referee: Do you wish to see it?

Mr. Conboy: Yes, but I object to it, in the first instance, on the ground it is incompetent. It is not the letter.

Mr. Carson: I can subpœna the bank's files and get the letter here.

Mr. Conboy: I presume so. In the first place, it is not competent. In the next place, what is written by this wit-
[fol. 35] ness to the Chairman of the Protective Committee of the National City Bank of New York is not relevant or material to any issue with which we are concerned here.

Mr. Carson: That was determined by the terms of the letter, in part, at least, I should think.

Mr. Conboy: Will counsel indicate what it is in the letter he regards as relevant and material to this issue?

Mr. Carson: I would say that the whole letter is, but I am particularly interested in the paragraph beginning "In view of the above" and what follows.

Mr. Conboy: I object to it, in view of what counsel has indicated, as being immaterial and irrelevant, that it is utterly irrelevant and immaterial.

The Referee: Mr. Carson, is this not res inter alios acta?

Mr. Carson: Not yet, your Honor; the actum is not complete yet. When it is complete I think you will see it is carried through and answered. Of course, I must introduce the evidence piece by piece. Mr. Conboy would object if I offered it all in a mass.

The Referee: All right; it will be received subject to a motion to strike.

Mr. Conboy: Exception. I want to know something about the manner in which these documents have been obtained, because there are some documents that we may be interested in if they turn up.

[fol. 36] The Referee: I will be obliged to sustain it on the best evidence rule, of course.

Mr. Carson: I ask to have it marked, with the understanding that I will substitute the original or account for its absence.

The Referee: It will be marked for identification.

Mr. Conboy: Then, it is not received in evidence now?

The Referee: It is not received in evidence.

(Copy of letter dated July 1, 1919, marked Defendant's Exhibit No. 1 for Identification.)

By Mr. Carson:

Q. Did you receive a reply to this letter, Mr. Ughet?

Mr. Conboy: That I object to on the ground it is immaterial, and irrelevant also.

The Referee: You are not objecting to the form of the question, are you?

Mr. Conboy: Oh, no.

The Referee: Overruled.

Mr. Conboy: Exception.

A. I did.

Q. Have you now access to the correspondence files which you maintained when Financial Attache of the Russian Embassy?

A. No.

Q. Where are those files now?

A. In the custody of the State Department.

[fol. 37] Q. I hand you a paper purporting to be a copy of a letter signed by J. H. F., addressed to yourself, dated July 11, 1919, and ask you whether you will read that and state whether that is a correct copy of the letter you received.

A. I believe that to be the essence of a reply received by me at the time.

Mr. Conboy: I move to strike out that statement.

Q. What do you mean by "essence of a reply" which you received?

Mr. Conboy: I move to strike that out.

The Referee: I will overrule the motion to strike out the answer.

Q. Will you explain what you mean by "the essence of a reply" which you received?

A. The substance, I mean to say. Of course, I couldn't say that that is the copy exactly of the letter received by me at the time. That is the substance of the answer, I recollect, as the one I got at the time.

Mr. Carson: I offer that paper in evidence.

Mr. Conboy: I object to it.

The Referee: Objection sustained, upon the ground that it is not the best evidence, which I understand is one ground upon which you——

Mr. Carson: Will Mr. Conboy produce Mr. Ughet's files out of the custody of the Government?

Mr. Conboy: We will not produce the files of a foreign [fol. 38] government, because I think that we are prohibited from doing that, but my objection is rather to relevancy and materiality in this instance than it is to competency.

Mr. Carson: On that statement I think your Honor might admit the letter.

Mr. Conboy: Won't you speak a little louder, because I do not hear the asides between yourself and the Referee, and I would like to be apprised of what you are saying from time to time.

Mr. Carson: It is not confidential.

Mr. Conboy: It may not be confidential, but it is not heard. That is the only objection I am making to it. I do not hear what you are saying.

The Referee: Yes, Mr. Carson, you should speak sufficiently loud so that all of us hear what you are saying.

Mr. Conboy: My objection, as to what Mr. Fulton wrote, is immaterial and irrelevant.

Mr. Carson: I am going to submit the enclosure.

The Referee: I understand that the Government declines to produce the original of this letter?

Mr. Conboy: Yes, you may so understand, sir.

The Referee: And that that is not——

Mr. Conboy: I have indicated already, your Honor, that I have not made objection to this upon the ground that it [fol. 39] is not the best evidence. My objection to it is that it is irrelevant and immaterial.

The Referee: It will be marked for identification for the present.

Mr. Carson: Your Honor is reserving a ruling on the offer?

The Referee: I sustain the objection to your offer in evidence at this time.

Mr. Carson: May I respectfully except?

(Letter dated July 11, 1919, from J. H. F. to Mr. Ughet, marked Defendant's Exhibit No. 2 for Identification.)

The Referee: You have stated here, as I understand it, a chain of correspondence that you will connect up?

Mr. Carson: Yes.

The Referee: You will have leave to offer the correspondence when you consider you have made your connection.

By Mr. Carson:

Q. Now, I hand you a paper purporting to be copy of a letter from Charles H. Sabin, as President of Guaranty Trust Company, to J. H. Fulton at the National City Bank, dated July 10, 1919, and ask you to read that and state whether you received a copy thereof at or about that time?

A. I believe, yes.

The Referee: When you say "I believe, yes," you mean that is to the best of your recollection?

[fol. 40] The Witness: Yes, sir.

Q. Was the copy which you received enclosed with the letter to you from Mr. Fulton, dated July 11, 1919, of which Defendant's Exhibit No. 2 for Identification purports to be a copy?

A. I believe, yes.

Q. You mean that that is so, to the best of your recollection, do you?

A. Yes.

(Discussion off the record.)

Mr. Carson: May the letter last referred to by the witness, dated July 10, 1919, be marked for identification?

The Referee: Yes.

(Letter dated July 10, 1919, marked Defendant's Exhibit No. 3 for Identification.)

The Referee: Are you familiar with the contents of Defendant's Exhibit No. 3 for Identification, Mr. Conboy?

Mr. Conboy: Yes, sir.

Mr. Carson: I renew my offer of Defendant's Exhibit No. 2 for Identification, and I offer in evidence with it this Exhibit 3 for Identification.

Mr. Conboy: And I object to it upon the grounds I have previously stated, and I object to it also upon the ground that it is an incomplete communication.

The Referee: Mr. Carson, this letter of June 9th that is [fol. 41] referred to, to the State Department at Washington, that has not been marked?

Mr. Carson: Not as yet, no.

The Referee: You intend to offer that?

Mr. Carson: I intend to offer that subsequently.

The Referee: I will sustain the objection at this time, with leave to renew your offer.

Q. I now hand you purported copy of letter from Charles H. Sabin to Frank L. Polk at the Department of State, Washington, dated June 9, 1919, and ask you whether you received a copy of that letter, to the best of your recollection, during or shortly after July, 1919?

A. I remember the fact of having received a letter, but I must admit I do not remember the contents.

Q. You state that you remember having received some letter from Mr. Sabin?

A. A letter accompanying this, but in perusing this letter I couldn't say whether it was this letter or not.

Q. Can you recall the contents of any other letter of which you received a copy at that time from Mr. Sabin to Mr. Polk, except the paper that you now have in your hands?

A. I may say simply that the Guaranty Trust Company was refusing to abide by the request addressed by me, but upon what grounds——

Mr. Conboy: I move to strike that out as attempting to characterize the communication.

The Referee: Motion granted.

[fol. 42] Q. I am simply asking, Mr. Ughet, having said you received some letter, but you cannot say if it is the paper in your hands, I want to know whether you can state the contents of any other letter which you received, a copy, from Mr. Sabin to Mr. Polk about that time than the paper you have in your hands?

A. No, I could not.

Q. Now, I hand you again Defendant's Exhibit No. 2 for Identification and Defendant's Exhibit No. 3 for Identification, and I call your attention to the last sentence of Defendant's Exhibit No. 3 for Identification, and ask you whether that refreshes your memory as to whether the paper dated June 9, 1919, last handed you is a copy which you received at the time?

A. Your Honor, I must repeat the same answer, that I remember the fact of having received a letter, but I do not recall the contents.

The Referee: You are referring now to this letter of June 9, 1919?

The Witness: Yes.

Mr. Carson: I ask to have the letter last referred to marked for identification.

The Referee: It may be so marked.

(Letter dated June 9, 1919, marked Defendant's Exhibit No. 4 for Identification.)

Q. Mr. Ughet, have you retained any copies of any letter which you may have received from Mr. Fulton enclosed with a letter of July 11, 1919, to you?

A. None aside from my former official files.

Q. All those files were turned over by you to the State [fol. 43] Department of the United States, were they?

A. Yes.

Mr. Carson: I now renew the offer in evidence of Defendant's Exhibits Nos. 2 and 3 for Identification.

Mr. Conboy: Same objection.

Mr. Carson: I state that an examination of the Guaranty Trust Company's files does not disclose any other letter of June 9, 1919, from Mr. Sabin to Mr. Polk than that which has been marked Defendant's Exhibit No. 4 for Identification.

The Referee: Is the form of that satisfactory to you, Mr. Conboy?

Mr. Conboy: You mean, do I accept the statement?

The Referee: Do you accept that as a fact, as to the files?

Mr. Conboy: That no other letter from Mr. Sabin to Mr. Polk is in the files of the Guaranty Trust Company except this copy of letter of June 9, 1919?

Mr. Carson: Exhibit 4 for Identification.

Mr. Conboy: Yes, I will accept that statement. I will accept Mr. Carson's statement to that effect.

The Referee: I would like to hear you, Mr. Carson, as to the materiality of these papers, Exhibits Nos. 2 and 3.

Mr. Carson: If your Honor will take them in connection with Exhibit No. 1 for Identification, which has not yet been received in evidence, awaiting production of the original.

[fol. 44] That is the demand on the Guaranty Trust Company through the Protective Committee.

The Referee: My difficulty——

Mr. Conboy: I will withdraw my objection with regard to the competency of Exhibit 1 for Identification upon the ground that it is not the best evidence that the original is not produced, for the purpose of enabling your Honor to rule upon the offer of the letter itself, that is, as if the original were produced.

(Discussion off the record.)

The Referee: Mr. Carson, the difficulty that I have as to admitting these letters is that they do not seem to be directly transactions between the bank, where the deposit was made, and the persons having authority to draw on the deposit.

Mr. Carson: Your Honor will not allow me to connect the evidence through this witness and to show that the National City Bank did write a letter to the Guaranty Trust Company, enclosing Mr. Ughet's letter. This witness would not know anything about that.

The Referee: That would not be of any importance, unless that act of the National City Bank was an act as the agent of Mr. Ughet.

Mr. Carson: Very well, sir.

The Referee: The mere fact that they forwarded a copy [fol. 45] of correspondence for his information would not be a transaction between the two.

Mr. Carson: And requested the Guaranty Trust Company to comply with this request. That will be the substance of the proof. Here we are only taking evidence that this witness can give with reference to the matters that passed through his hands. I can conceive that these three letters within themselves, and not more, would not authorize judgment dismissing the complaint, under the Statute of Limitations. We expect to complete them by correspondence between the National City Bank and the Guaranty Trust Company, based on Mr. Ughet's letter, Exhibit 1 for Identification.

I take it your Honor's question, therefore, really is whether the letter, Exhibit 1 for Identification, authorized National City Bank or the Protective Committee to write a letter to Guaranty Trust Company which could be answered by Exhibit 2 and Exhibit 3.

The Referee: Yes, that is substantially it. On the present state of the record, I sustain the objection. These exhibits marked for identification will, of course, be part of the record, and the Court can see them in passing on the motion.

Mr. Carson: I take it your Honor's policy as Referee is simply to mark material for identification for submission to the Court upon the submission of the deposition?

The Referee: I have not stated any general policy except [fol. 46] with respect to these letters. They have been marked for identification, and anything that is marked for identification, I assume, will be available for you to show the Court, which may take a different view of the matter than I do.

Mr. Carson: Does your Honor care to hear me further on the relevancy and materiality of these letters?

The Referee: Yes, I would be glad to. Shall we have it off the record?

Mr. Carson: Yes.

(Discussion off the record.)

By Mr. Carson:

Q. Mr. Ughet, I forgot to ask you, at or before the time of your writing the letter of July 1, 1919, to Mr. Fulton, Chairman of the Protective Committee, of which Exhibit 1 for Identification purports to be a copy, did you have a conference on the subject with Mr. Sabin of the Guaranty Trust Company?

Mr. Conboy: I object to it upon the ground it is immaterial and irrelevant whether he did or did not.

The Referee: Overruled.

Mr. Conboy: Exception.

Q. Answer "yes" or "no".

A. No.

Q. I would like to ask you again to search your recollection, Mr. Ughet, and state whether, in writing to the Pro- [fol. 47] tective Committee with respect to the use of funds to pay on the $50,000,000 credit, you did not address Guaranty Trust Company directly in one way or another?

A. You see, as far as I remember, there was a kind of a conference of bankers interested in the issue of those 6½

per cent participation certificates, and that representative of the Guaranty Trust Company was present at this conference.

Q. Were you present?

A. Yes.

Q. Who was the representative of the Guaranty Trust Company who was present?

A. I do not remember that.

Q. Do you remember whether or not it was Mr. Sabin?

A. No.

Q. Now, apart from that conference which you have just mentioned, did you have a personal conference with Mr. Sabin with respect to the request contained in Defendant's Exhibit No. 1 for Identification?

A. I think not.

Q. When did the conference of bank representatives which you have mentioned take place, to the best of your recollection?

A. Some time before July 10th, before the due date.

Q. 1919?

A. 1919.

Q. Where did it take place?

A. At the National City Bank.

Q. Was anything said by you or by the man whom you have described as a representative of the Guaranty Trust Company, to your recollection, with respect to the payment out of the Ministry of Finance account upon or to the order of the Government of Russia?

A. I believe not.

[fol. 48] Q. Did you participate in any discussion toward the end of 1921 with respect to the use of Russian funds in this country for the financing of Russian relief?

Mr. Conboy: I object to that on the ground it is not comprised within these issues.

Mr. Carson: It is preliminary.

The Referee: I think I will overrule the objection on that ground.

Mr. Conboy: Exception.

Q. You may answer.

A. To the best of my recollection, not.

Q. Do you recall the occasion toward the end of 1921, when efforts were made in this country to raise funds for Russian relief?

A. I do.

Mr. Conboy: Wait a minute. I object on the ground it is immaterial and irrelevant. I cannot conceive how it could have the slightest relevancy or materiality.

The Referee: It is evidently preliminary. I will overrule the objection for that reason.

Mr. Conboy: Exception.

A. I do.

Q. Did you authorize or request the State Department to write to the Guaranty Trust Company at that time with reference to the use of the Ministry of Finance account here involved, or part of it, for that purpose?

Mr. Conboy: I object to it.

The Referee: Sustained.

[fol. 49] Q. Did you have any conversation with anyone in the State Department at Washington toward the end of 1921, with respect to the use of the Ministry of Finance account here involved?

Mr. Conboy: I object to it.

The Referee: It may be answered "Yes" or "no."

Mr. Conboy: Exception.

A. No.

Q. I hand you a paper purporting to be copy of a letter from Charles H. Sabin to Hon. Charles E. Hughes, Secretary of State, dated December 9, 1921, and ask you to read it and state whether or not you received a copy of that letter, or learned its contents, at or about that date?

Mr. Conboy: I should object to it upon the ground it is irrelevant and immaterial, whether he received a copy of it or learned of its contents.

The Referee: Overruled.

Mr. Conboy: Exception.

A. I have received no copy of this letter, but, to my recollection, I learned, whichever it was, at the end of 1921 or in the early part of 1922, that the Guaranty Trust Company was——

The Referee: Not the contents of it. The question was whether you knew of its contents at that time.

The Witness: The contents of the letter? Then, I have to answer in the negative.

[fol. 50] The Referee: You did not know of the contents?

The Witness: No, sir.

Q. You are referring to this particular letter of December 9, 1921, which I have shown you?

A. Yes.

Q. Were Coudert Brothers, the attorneys of the Russian Embassy in New York, in 1917?

A. Yes, sir.

Q. Did you know Mr. Grayson M.—P. Murphy at that time?

A. Yes.

Q. And you knew Mr. Albert Breton, vice-president of the Guaranty Trust Company?

A. Yes.

Q. Did your title as a diplomatic representative of the Russian Government change after the resignation of Mr. Bakhmeteff?

A. No.

Q. In your capacity as Financial Attache to the Russian Embassy, did you know after the year 1917 whether or not the Guaranty Trust Company would pay upon the order of the Russian Government, the Ministry of Finance account here involved?

Mr. Conboy: I object to that because that will call for his inferences or deductions or conclusions with respect to matters that are not in evidence. Whether he surmised it or inferred it is not, of course, material or relevant.

The Referee: Objection sustained to that question.

Q. After the Soviet revolution in 1917, did you have one or more conferences with officers of Guaranty Trust Company with respect to payment of this Ministry of Finance [fol. 51] account to the Ambassador or to the Russian Government?

The Referee: That calls for a "yes" or "no" answer.

A. Yes.

Q. How many would you say you had?

A. You mean after 1917, in general?

Q. Yes, in general, with the Guaranty Trust Company, on the subject.

A. I should say probably three or four.

Q. With what individual officers of the Guaranty Trust Company did you confer on the subject?

A. To my best recollection, with Mr. Sabin.

Q. You have no recollection of anyone else?

A. You mean on this specific matter?

Q. On this specific matter, yes.

A. On this specific matter, I believe not.

Q. Will you state the substance of what Mr. Sabin said to you in those conversations as to whether or not Guaranty Trust Company would make payment to the order of the Russian Government out of this Ministry of Finance account?

Mr. Conboy: And that I object to, if the Court please, upon the ground that such a conversation would be binding not upon the Guaranty Trust Company at all. As to whether they disclaimed liability upon an account, that depends upon the statement of an officer of the corporation.

Mr. Carson: That I think we might reserve for the argument on the law.

[fol. 52] Mr. Conboy: I am making my objection to it now because the question has been asked, and I regard the question as objectionable.

The Referee: I shall sustain the objection, Mr. Conboy, but not on that ground. I think we should have more circumstance as to time, place and date.

Q. Mr. Ughet, will you state the times and places of those conversations with Mr. Sabin, as nearly as you can remember?

A. My first conference with Mr. Sabin took place in his room at the Guaranty Trust Company in the very first days of December, 1917, when first I brought to Mr. Sabin a copy of a letter addressed by the Ambassador to the National City Bank, and dated November 28, 1917, and I left a copy of this letter with Mr. Sabin. At that time he was absolutely non-committal and simply told that the matter will be considered and that an answer will be given me.

Q. Was an answer given you?

A. In writing, yes.

Q. Before we come to that, will you state the times and places of any other conversations with Mr. Sabin on the subject?

A. Subsequent to that I recall just this short conference in Mr. Polk's office in Washington.

Q. Which you have already described?

A. Yes.

Q. That took place, you stated, early in 1918 or the end of 1917?

A. Either the latter part of December, 1917, or in the early part of January, 1918.

Q. What further conversations did you have, and when and where?

A. I must confess that outside of that, I have no recol- [fol. 53] lection of definite conversation on definite dates and at definite places.

Q. Just to be sure I have your full recollection on the subject, I want again to ask you, Mr. Ughet, whether in connection with the letter which you wrote the Protective Committee at National City Bank, which has been shown to you, you did or did not discuss with Mr. Sabin the contents of that letter, or a similar request as contained in that letter, at the Guaranty Trust Company?

A. I did not discuss the letter with Mr. Sabin. About that I am quite positive.

Q. Did you have a conference with him before sending the letter?

A. It could so happen, because my relations with Mr. Sabin were friendly, and perhaps the question was broached, but I couldn't say that I recollect that formally, I should say, I took up the letter with him.

Q. Did you have a conversation with him prior to the sending of the letter?

A. Very possibly, but I do not recollect that as a definite fact.

Q. Mr. Ughet, you referred to leaving a copy of letter with Mr. Sabin early in December of 1917. I hand you a purported copy of letter in two pages, dated November 28, 1917, and ask you whether that is the paper you left with Mr. Sabin?

Mr. Conboy: I take it this question is preliminary?

Mr. Carson: Yes.

A. Yes, I believe that is the letter, or a copy.

Q. What did you say to Mr. Sabin, if anything, when you left him that copy?

[fol. 54] Mr. Conboy: Objected to on the ground it is immaterial and irrelevant. It is utterly incompetent on what we have to deal with in this case.

The Referee: There has not been any reference to the paper yet, except as fixing a time. I will have to hear the answer, I think, and overrule the objection.

Mr. Conboy: Exception.

A. In view of the fact that on the strength of this letter of November 28, 1917, certain arrangements were made between the Ambassador and the National City Bank, so in leaving a copy of this letter with Mr. Sabin, I asked him whether the Guaranty Trust Company would not be willing just to adopt the same attitude towards this Ministry of Finance account with them as the National City Bank adopted its attitude towards the Russian Government funds with the National City Bank.

Q. You previously said that Mr. Sabin gave you no answer at that time; is that right?

A. A non-committal answer, and he promised to write me on the subject.

Mr. Carson: I offer this letter to be marked for identification.

(Letter dated November 28, 1917, marked Defendant's Exhibit No. 5 for Identification.)

Q. I hand you purported copy of letter from Charles H. Sabin, as President of Guaranty Trust Company to your-[fol. 55] self, dated December 12, 1917, and ask you to read that and state whether you received the original.

A. Yes, these are the contents of a letter I received at the time.

Mr. Carson: I ask to have that marked for identification.

(Letter dated December 12, 1917, marked Defendant's Exhibit No. 6 for Identification.)

Mr. Carson: I think that is substantially all my direct examination. I would like to reserve the question of again tendering these exhibits marked for identification and not admitted by your Honor.

The Referee: You have not tendered 5 and 6. I have no ruling in respect to those.

Mr. Carson: I have not. I would also like to reserve the right to supplement the examination upon reading the transcript of the minutes.

Mr. Conboy: I think perhaps we will reserve our cross-examination until you finish.

The Referee: I see no reason for that, Mr. Conboy.

Mr. Conboy: I think I prefer to cross-examine at the conclusion of the direct examination. I think that is ordinarily my right.

Mr. Carson: I think this is the conclusion of the direct examination.

Mr. Conboy: No, I understand it is not. I understand [fol. 56] counsel wants to ask some further questions. If you do not intend to ask——

The Referee: Will you read back to me, please, Mr. Stenographer, what the reservation is?

(Record repeated.)

The Referee: It is undoubtedly Mr. Conboy's right to wait until you conclude.

Mr. Carson: I will state that I have concluded. I also give notice that if I find my direct is lacking in some particular, I will ask your Honor to reopen it, but I have substantially concluded, and that is what I intended to say.

The Referee: Of course, so far as questions are concerned, you are either through or you are not. If you reserve the right to read the transcript and then ask further questions, of course, Mr. Conboy is entitled to wait.

Mr. Carson: I am making no reservation of any kind, except I request to reserve the right to argue the question of admissibility of documents already identified.

The Referee: I think that may be done.

Mr. Conboy: I move to strike out the testimony of the witness regarding the conversation between himself, Mr. Sabin and Mr. Polk that took place in the State Department in Washington, upon the ground that under the circumstances disclosed, the statements made by Mr. Sabin [fol. 57] at that time in answer to any inquiry of Mr. Polk, are not relevant or material to, and not competent upon, the issues that are involved in this case.

The Referee: Decision reserved.

Mr. Conboy: And I further move to strike out any comment that the witness himself made with regard to the

statements made by Mr. Sabin at that time, on the ground that they are not competent evidence.

The Referee: I am not sure that I know the portion of the testimony that you are now referring to, Mr. Conboy.

Mr. Conboy: Will you go back and read that testimony, if you please, so that we may have no misunderstanding upon it? I think it is in the early part of the testimony.

The Referee: I did not understand that I had admitted any comment on the part of the witness. You mean at the conversation?

Mr. Conboy: What is in the nature of a comment by the witness.

Mr. Carson: I do not think there was any such thing.

The Referee: I would like to have it identified.

(Answer repeated as follows: "A. At this conference Mr. Polk asked Mr. Sabin whether the Guaranty Trust Company would consent to release this fund to the jurisdiction of the Russian Embassy, and Mr. Sabin pointed out that because the Guaranty Trust Company was having certain claims against Russia in consequence of November [fol. 58] events of 1917, that the Guaranty Trust Company, therefore, was not feeling at liberty to release this fund to the jurisdiction of the Russian Embassy.")

Mr. Conboy: I move to strike that out on the ground that it is not relevant or material, as well as not competent. What Mr. Sabin said with regard to what the Guaranty Trust Company did with respect to a release of those funds to the Russian Embassy certainly cannot be claimed to be binding upon the Guaranty Trust Company; and in the next place, what Mr. Sabin said would be done with reference to the release of funds to the Russian Embassy that stood to the credit of the Ministere de Finance Section Etrangere is not relevant or material, so I object to it upon the grounds of incompetency, irrelevancy or immateriality, and I move to strike out upon those grounds.

The Referee: It is not disputed that Mr. Sabin was President of the Guaranty Trust Company at that time, is it?

Mr. Conboy: I presume he was President at that time. I see a letter from him in 1917 signed by him as President, and another letter later as Chairman of the Board. Whether he was President or Chairman of the Board at that time, I do not know, but I think he was President.

Mr. Carson: He was President.

Mr. Conboy: Apparently he was President again in 1919.
[fol. 59] The Referee: Of course, what I have in mind, Mr. Conboy, is the presumption which attaches to the acts of a president, that he can speak for his company, if he purports to do so, as apparently he did here. I will deny the motion which you made, in fact, all of the motions just made at the conclusion of the witness's direct examination, except that I will reserve decision as to the competency of this witness in view of his official status. As to that, I would like to be enlightened by authority, if it is available.
Mr. Carson: Off the record.

(Discussion off the record.)

Cross-examination.

By Mr. Conboy:

Q. Mr. Ughet, were you at any time the Ministere des Finances, Section Etrangere?
A. No, sir.
Q. Did you at any time have any right to sign checks on any account that was standing to the credit of the Ministere des Finances, Section Etrangere?
A. With the Guaranty Trust Company?
Q. With the Guaranty Trust Company.
A. No, sir.
Q. And the account which we have been speaking of with the Guaranty Trust Company was an account that stood to the credit of Ministere des Finances, Section Etrangere, was it not?
A. Yes.
Q. With respect to that account, as I understand it, you had no right to sign any checks whatever, did you?
A. No.
[fol. 60] Q. And you had no right to draw upon that account at all, did you, Mr. Ughet?
A. No.

Mr. Conboy: Will you go back, Mr. Stenographer, and read the record after what you read before?

(Record repeated.)

Mr. Conboy: That is all.
The Referee: That concludes the cross-examination?
Mr. Conboy: Yes, sir.

(Whereupon, at 4:45 P. M., an adjournment was taken to Friday, May 10, 1935, at 2:30 P. M.)

[fol. 61] DEPOSITION OF SERGE UGHET

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

Docket 59, p. 80

UNITED STATES OF AMERICA, Plaintiff,

against

GUARANTY TRUST COMPANY OF NEW YORK, Defendant

#70 Pine Street, New York City,
September 17, 1935, 2:30 P. M.

Before Harold Harper, Esq., Referee

Appearances:

Hon. F. W. H. Adams, United States Attorney, by Leon E. Spencer, Esq., Assistant United States Attorney.

Davis, Polk, Wardwell, Gardiner & Reed, Esqs., by Ralph M. Carson, Esq., of counsel, attorneys for defendant.

Coudert Brothers, Esqs., by Mahlon B. Doing, Esq., of counsel, attorneys for Boris Bakhmeteff.

[fol. 62] Mr. Spencer: Before proceeding I suppose I ought to call your Honor's attention to something I entirely overlooked before, namely, that Mr. Conboy declined to go ahead with the examination of Mr. Bakhmeteff, the cross-examination, unless Mr. Carson stated that he had finished with his direct examination. Mr. Carson has just told me that he wants to ask some additional questions. The same remark applies to Mr. Ughet's testimony, Mr. Conboy declined to go ahead.

My sole purpose is to limit the extent of the redirect examination, the nature of which I am not familiar with at the moment, and I would not want it to run into a redirect of the whole situation.

The Referee: One of the objects of appointing a Referee is to obtain a little freer modus operandi, other than you

get in court, and I should be inclined to permit any examination and to reopen for that purpose if there is anything of importance to be brought up on either side. Do I understand that Mr. Ughet has not been cross-examined at all?

Mr. Carson: He has been cross-examined for a bit.

Mr. Spencer: Mr. Conboy at the time said that he did not wish to go ahead with the cross-examination unless he was advised that he was finished.

The Referee: Are you prepared to cross-examine Mr. Ughet today?

[fol. 63] Mr. Spencer: Unless it is on matters taken care of before.

The Referee: This is some point that has not yet arisen. Suppose we wait and see how far Mr. Carson goes.

SERGE UGHET, resumed the stand and testified further as follows:

Redirect examination.

By Mr. Carson:

Q. Mr. Ughet, do you recall the letter which you wrote under date of July 1, 1919, to the Protective Committee and which has been marked Exhibit No. 1 for Identification?

A. Yes, I remember.

Q. I merely want to ask you in connection with that letter whether you knew at the time that the Guaranty Trust Company was a member of the syndicate of banks referred to in that letter. To put my question otherwise, who were the members of that syndicate of banks?

Mr. Spencer: Of course, this question is based upon his knowledge as of that time and not as of today.

Mr. Carson: That is right.

A. The members of the Protective Committee were the members of the so-called Russian group of banks.

Q. I asked you who were the members of the syndicate re-
[fol. 64] ferred to in that letter. A. I will try to remember who composed this Russian group. There was the National City Bank, Morgans, Guaranty Trust, Kidder, Peabody, Lee Higginson, and a sixth one.

Q. You knew that at the time?

A. Oh, yes.

Q. At the time of writing that letter, Exhibit 1 for Identification, did you know whether or not an officer of Guaranty

Trust Company was a member of the Protective Committee to which the letter was addressed?

A. No.

Q. Did you know who was the paying agent of the loan described in that letter, and if so, who was it?

A. Either I did not know or I do not remember now. Who was the paying agent I do not know.

Q. At page 44 of the minutes you referred to a conference of bankers interested in the issue of those 6½ per cent participation certificates, and you said that you were present at that conference. Do you recall that in general?

A. About the fact of such a conference?

Q. Yes.

A. Yes.

Q. Would you state to the best of your recollection what took place at that conference?

A. No, I do not remember. I remember the fact of the conference. At any rate, I do not want to be understood that it was a conference of the bankers dealing with the ways how best to protect the holders of 6½ per cent Imperial bonds. It was some kind of a conference relating to this issue, but what exactly was treated at this conference, that I do not remember.

Q. Did you know Mr. Harold Stanley?

A. No.

[fol. 65] Q. Have you read the copy of letter from Mr. Sabin to Mr. Polk, dated June 9, 1919, Exhibit 4 for Identification?

A. Yes, it was shown to me in May.

Q. You have read it?

A. Yes, at that time.

Q. Will you read it again?

A. Yes.

Q. I previously asked you whether you had seen a copy of that letter at or after that time, and you testified, if I recall, that you could not remember having seen a copy of that letter. Is that right?

A. That is correct.

Q. I now want to ask you whether you learned the contents or substance of that letter in any way at that time or thereafter.

Mr. Spencer: Up until today?

Mr. Carson: Up until 1923.

A. To my recollection I did not know the contents of this letter.

Q. Did the officials of the Russian Embassy under you, as far as you know, learn the contents of that letter at that time and up until 1923?

Mr. Spencer: I object. Did his subordinates learn of it is rather an objectionable question. He cannot speak for them.

The Referee: I think I will have to take the answer and then you may inquire on cross as to what his information was. Possibly we shall then have to strike out the answer that we now receive. Objection overruled.

A. Of course, I may speak on assumption only—

[fol. 66] The Referee: Do not speak on assumption. You are being asked with regard to your knowledge.

By Mr. Carson:

Q. If you know, whether or not your subordinates after that time up until 1923 learned the substance of that letter in any form?

A. That I do not know.

Q. I now direct your attention to Defendant's Exhibit 7 for Identification, a copy of letter from Mr. Sabin to Secretary Hughes, dated December 9, 1921.

A. Yes, I remember. It was shown to me in May.

Q. You recall I previously asked you whether you had seen a copy of that letter or the original of that letter, and you replied "no."

A. That is right.

Q. I now want to ask you whether you in any form learned the substance of that letter as a statement of the Guaranty Trust Company at or about that time?

A. No, I did not.

Q. Were the statements contained therein, whether the substance of a letter or not, brought to your knowledge at that time or about that time?

A. I may say that some time after December, 1921, I knew that some approach was made to the Guaranty Trust Company and that the Guaranty Trust Company refused to part with the $5,000,000 fund.

Q. Can you recall at this time how and when you acquired the knowledge you speak of?

A. No.

Mr. Carson: That is all the questions I have of this witness.

[fol. 67] Recross-examination.

By Mr. Spencer:

Q. Mr. Ughet, you have testified on direct that you were aware of the members of the banking syndicate to which Mr. Carson referred. From what source did you get that information?

A. From my general conversations with bankers at the time.

Q. You have also testified that in connection with this letter from Mr. Sabin to Mr. Hughes, the Secretary of State, you were aware of the contents of that letter?

A. No.

Q. When did your information that the Guaranty Trust Company had refused to give up the $5,000,000 fund come to your attention?

A. Your question refers specifically after December, 1921, or in a general manner? The first time it came to my attention in December, 1917.

Q. My question refers to your answer to Mr. Carson's question and I am trying to place the date of that answer.

A. I could not say any more definitely than it was after December, 1921.

Mr. Spencer: That is all.

Redirect examination.

By Mr. Carson:

Q. When you say that you learned that an approach was made to the Guaranty Trust Company, can you specify any more as to who made the approach according to your knowledge?

A. The United States Government, but what exact branch of the Government, that I would not know.

[fol. 68] Q. And this approach was made with the knowledge and the approval of the Embassy?

A. I do not think so.

Mr. Carson: I have no more questions.
Mr. Spencer: No further questions.

S. Ughet.

Sworn to before me this 19th day of September, 1935.
Matthew V. Stepsis, Notary Public, Kings County.
(Seal)

(It is stipulated that the witnesses may subscribe and swear to their depositions after reading the same before any notary public of New York County, with the same force and effect as if subscribed and sworn to before the Referee.)

[fol. 69] In United States District Court

[Title omitted]

Deposition of Boris Bakhmeteff

No. 70 Pine Street, New York City,
May 10, 1935, 2:30 P. M.

Before Harold Harper, Esq., Referee

Appearances:

Hon. Martin Conboy, United States Attorney, by Leon E. Spencer, Esq., Assistant United States Attorney; Henry Munroe, Esq., United States Treasury Department, Washington, D. C., for the Plaintiff.

Davis, Polk, Wardwell, Gardiner & Reed, Esqs., Ralph M. Carson, Esq., of counsel, Attorneys for Defendant.

Coudert Brothers, Esqs., by P. A. Shay, Esq., of counsel, Attorneys for Boris Bakhmeteff.

[fol. 70] Deposition of Boris Bakhmeteff, taken pursuant to order of Hon. Francis G. Caffey, United States District Judge, dated April 30, 1935.

The Referee: At the conclusion of yesterday's session there was still open a motion by the United States to strike out the testimony of Mr. Ughet on the ground that the transactions as to which he was called upon to testify were privileged and that privilege could be raised by the United States. That motion will be denied.

Mr. Spencer: Exception.

Mr. Shay: I wonder if, in the interest of expediting this matter, I may be permitted to make a short statement for the witness.

The Referee: Surely, Mr. Shay.

Mr. Shay: Mr. Referee, I am appearing as counsel for the witness, Mr. Bakhmeteff, who was, as you know, the Russian Ambassador to the United States between 1917 and 1922.

I have learned that Mr. Carson proposes to interrogate Mr. Bakhmeteff as to matters which clearly pertain to the governmental business which Mr. Bakhmeteff was transacting for the Russian Government at the time he was the Ambassador.

I take the position that under the authorities and under the United States statutes, an Ambassador from a foreign country to the United States is entitled to claim privilege as to these transactions, and it is my view that the witness cannot be required to give testimony unless his sovereign waives the privilege which he undoubtedly is entitled to receive.

[fol. 71] Later on we may change this position if the Government of the United States, through the Government attorneys, asks Mr. Bakhmeteff to give testimony with regard to the matters about which he may be questioned.

The Referee: Well, I should be glad to be directed by anybody to any authorities which are controlling in this situation.

Mr. Shay: Perhaps I should have explained that my partner, Mr. Mahlon B. Doing, has been acting as counsel for Mr. Bakhmeteff and has a more intimate knowledge of these matters than I have. Unfortunately, Mr. Doing was obliged to go to Washington today. And I believe he tried to arrange for a postponement of this hearing with Mr. Carson——

Mr. Carson: That is right:

Mr. Shay: But Mr. Carson took the position that a postponement could not be permitted. Mr. Doing has drawn my attention to the case of Torlade v. Barrozo, 1 Miles (Penna.), 366; and he has also drawn my attention to a case in 24 Federal, at page 1084, and to 22 U. S. C. A., Sections 251 to 255, inclusive.

The Referee: Now, I will be glad to examine those. I think perhaps if we take a brief recess at this point, and I will examine those cases, I think that would probably be——

Mr. Carson: More expeditious.

The Referee: Yes. All right, if that is convenient to everybody, we will recess, we will say for fifteen minutes.

Mr. Shay: Mr. Referee, may I speak off the record now?

[fol. 72] The Referee: Yes.

(Discussion off the record. Recess taken.)

Mr. Carson: Before there is any ruling on Mr. Shay's objection, may I note for the record objections to your Honor entertaining that objection, as follows: First, that it is an objection which cannot be raised by the witness or his counsel, who is not a party to this proceeding; second, that it is an objection which was in effect determined and disposed of, or waived, upon the motion which the defendant made for leave to take this deposition, on the papers for which motion it was fully disclosed that Mr. Bakhmeteff was to be examined as a former Russian Ambassador; third, that the objection, if made at all, can be taken only by motion to quash the subpoena which has been served on this witness. That motion has not been made, and thereby the objection waived. And fourth, that the matter to be examined into is not a matter of sovereign interest or importance but is a matter in which the sovereign was involved in a proprietary or quasi-proprietary capacity.

Mr. Shay: In reply to Mr. Carson's statement, your Honor, may I say that Mr. Bakhmeteff had no knowledge regarding the nature of this proceeding except the knowledge which he was able to glean from the subpoena which was served upon him. And therefore, of course, it cannot be said that he has waived any of his rights. And moreover, our position is that he is not in a position to waive his rights, that only his sovereign is in a position to do that.

[fol. 73] The Referee: Mr. Bakhmeteff by advice of counsel has taken the position that he is not subject to any inquiry in this reference whatever. This objection was taken at the outset and before he was sworn.

I am directing Mr. Bakhmeteff to submit to a preliminary examination for the purpose of determining whether his status is such as to entitle him to diplomatic immunity. And in making this direction it is understood, and I understand conceded by the defendant, that in submitting to this limited examination Mr. Bakhmeteff is not in any way waiving the claim of privilege which he has made at the outset.

Will you raise your hand and be sworn, Mr. Bakhmeteff.

BORIS BAKHMETEFF, being first duly sworn by the Referee, testified as follows:

Direct examination.

By Mr. Carson:

Q. Mr. Bakhmeteff, when did you resign as Russian Ambassador to the United States?

A. In June, 1922. I don't remember exactly the date. It was in June, 1922.

Q. Did you resign by written letter, or in what form?

A. Yes, I did resign by written letter, on invitation of the State Department.

Q. Was the invitation of the State Department to you in writing or oral?

A. No, it was informal.

Q. After resigning have you handled the affairs of the [fol. 74] Russian Government in this country?

A. No.

Q. Upon resigning did you receive your diplomatic passports from the United States?

A. I don't think the American Government had any of my passports. They did not have anything to return to me.

Q. Did they give you a diplomatic passport to return to Russia?

A. They did not give me any, and I did not ask for any.

Q. Where did you reside at the time of your resignation?

A. In Washington, D. C.

Q. Where do you reside now?

A. In New York City.

Q. How long have you resided in New York City?

A. Since 1922.

Q. What is the place of your residence here?

A. 876 Park Avenue.

Q. How long have you been at that address?

A. Since September this year,—1934.

Q. Prior to September, 1934, where did you reside?

A. 55 East 72nd Street.

Q. How long did you reside there?

A. About three years.

Q. And prior to that did you reside at other addresses in New York City?

A. Yes.

Q. Since 1922?

A. Yes.

Q. What is your occupation at the present time?

A. Consulting engineer.

Q. Do you have clients who consult you in that capacity in this country?

A. Well, a limited number of clients, yes.

Q. Do you have a position with Columbia University?

[fol. 75] A. Yes, I am Professor of Civil Engineering.

Q. How long have you been such professor?

A. Three or four years; I don't remember exactly.

Q. Have you a business address in New York City?

A. Yes.

Q. What is that address?

A. 250 West 57th Street.

Q. How long have you had that business address?

A. Since 1925, I think.

Q. And will you describe briefly the nature of the business that you conduct at that address?

A. Engineering consultation, and mostly advising on manufacturing. And I am Chairman of the Lion Match Company.

Q. Are you an American citizen?

A. No.

Q. Have you applied for citizenship?

A. Yes.

Q. When did you apply?

A. About two years ago.

Q. Have you received your first papers?

A. Yes.

Mr. Carson: That is all. On that record I submit the witness should be examined with respect to the subject of this inquiry.

Mr. Shay: And I renew my statement that the witness ought not to be required to give testimony regarding matters pertaining to the business of his sovereign.

Mr. Spencer: If your Honor please, I wish the record to show that the United States Government reasserts the right to and does object, to continued questioning with re-

[fol. 76] upon the same grounds as were more fully stated by Mr. Conboy yesterday; and I don't need to restate them in any detail.

The Referee: Have you any questions to put,—has anyone any questions to put to the witness as to his present personal status?

Mr. Shay: I haven't.

The Referee: Have you, Mr. Spencer?

Mr. Spencer: No, I have not.

By Mr. Carson:

Q. Mr. Bakhmeteff, I would like to ask you directly, do you claim to be an Ambassador or former Ambassador of the Government of Russia in process of returning to Russia?

Mr. Shay: I object to that.

The Referee: I will sustain the objection to that. I don't think it is necessary.

Upon the record that has been made I shall rule that the witness is not immune from the process of this Court, and that having been duly subpœnæd, he is obligated to give testimony as any other witness. As to the objections that have been raised as to the transactions, a ruling will be made on them as the questions are presented.

You may proceed.

Mr. Shay: Your Honor, may I inquire whether—perhaps it is your desire that we proceed to a specific question and [fol. 77] then submit that to the Court for its ruling, if you elect to get the Court's opinion on the question. Or do you prefer to have this hearing adjourned at this time?

The Referee: Well, I should prefer to reach a point where some question is raised,——

Mr. Carson: I should think that would be more orderly.

The Referee (continuing): —suitable for review.

Mr. Shay: Well, without waiving any of our rights, of course, I am quite in accord with your views.

Mr. Spencer: I would like the record to show that the Government has an exception to your ruling.

Mr. Shay: I likewise, in the case of Mr. Bakhmeteff.

The Referee: Very good.

Mr. Carson: And, as exceptions are taken, may I take an exception to your Honor's ruling on my objections to your Honor entertaining that objection.

The Referee: Very well. Everybody has an exception except the Referee and the stenographer.

By Mr. Carson:

Q. Mr. Bakhmeteff, you were Russian Ambassador to the United States during the period 1917 to 1922, were you?

A. Yes.

Q. I understand that about December 3, 1918, you tem-
[fol. 78] porarily left your position to go to France. Is that correct?

A. That is correct.

Q. And how long did you remain out of the United States?

A. Until July, 1919.

Q. Mr. Serge Ughet was Financial Attache of the Russian Empire during the period of your service as Ambassador, was he?

A. Yes, sir.

Q. And during your absence from the country I understand he was Charge d'Affaires, is that correct?

A. Yes, sir, that is correct.

Q. After the Soviet revolution you continued your functions as Ambassador of the Russian Government in this country?

A. Yes.

Q. Until your resignation?

A. Yes.

Q. In your capacity as Ambassador, were you familiar with the existence of an account standing with the Guaranty Trust Company of New York in the name of a department of the Russian Government?

Mr. Shay: I respectfully object, your Honor, on the ground that this distinctly pertains to the business of the Russian Government, and this is the type of question which I feel the former Ambassador should not be obliged to answer.

Mr. Carson: Well, he is just being asked so far if he was aware of the fact. I don't think that is very injurious.

Mr. Shay (to the stenographer): Will you read the question?

(Question read by the stenographer.)

The Referee: I will overrule the objection to that.

Mr. Shay: Exception.

[fol. 79] The Witness (answering): In a general way, I knew, of course; not details.

Q. Was the title of that account Ministere de Finance Section Etrangere?

A. I couldn't tell you that. I didn't know the account.

Q. Did you know the approximate balance of that account at the end of the year 1917? Just say "yes" or "no".

Mr. Shay: I renew my objection, Mr. Referee. And if you rule against me on this objection, may I have a continuing objection to all of the questions which are being asked pertaining to the business and affairs of the Russian Government?

Mr. Spencer: The Government objects to this question.

The Referee: Off the record.

(Discussion off the record.)

By Mr. Carson:

Q. In your capacity as Ambassador did you learn that Guaranty Trust Company would not pay this account on the orders of the Russian Government?

Mr. Spencer: The Government objects to the witness answering this question, on the ground that he is immune, on account of his diplomatic relations.

Mr. Shay: Same objection, as previously stated.

[fol. 80] The Referee: Well, I think we have reached a point where it is necessary to pass upon the question that you have raised, Mr. Shay, as to whether the transaction itself may be examined. In your view of the situation, no question of diplomatic immunity from process is involved. The objection, as I understand it, is to an inquiry into transactions to which the Imperial Russian Government was a party, through this witness.

The Witness: And the Provisional Government.

Mr. Carson: And the Provisional Russian Government.

The Witness: Yes, I did not represent them.

The Referee: The Imperial and the Provisional Government—transactions to which the Provisional Russian Government was also a party, through this witness.

The transactions to be inquired into, at least as they were revealed by the examination of the witness yesterday, were

entirely those of a busines or proprietary character and did not appear to involve matters of a confidential nature. They appear, furthermore, to be matters which are material to the determination of this lawsuit, which is between the United States and one of its own nationals.

My attention has not been called to any statute or judicial authority which forbids inquiry into these transactions, and the objection is therefore overruled, with exceptions to the United States and to the witness himself.

[fol. 81] In view of the representation by counsel for the witness that answers to these questions may in some way prejudice the witness so far as his relations with the government he represented are concerned, I shall adjourn this proceeding to give the excepting parties opportunity to review my action in the District Court.

Mr. Shay: In order that my objection may be stated more clearly, may I say that it is really a two-fold objection; firstly, on the ground that Mr. Bakhmeteff is a former Ambassador of the Russian Government, and, secondly, on the ground that the Court is not permitted to examine into the business and affairs of the Russian Government in a proceeding of this character.

I wonder, your Honor, if I might have a sufficient amount of time so that Mr. Doing will be able to resume this matter on next Tuesday. It so happened that Mr. Doing applied to Mr. Carson for a postponement of this matter, and he will take it up. I have to leave for a time, tomorrow.

The Referee (to the stenographer): You need not take this down.

(Discussion off the record.)

(Whereupon, at 4:00 o'clock P. M. the matter was adjourned to Tuesday, May 14, 1935, at 4:45 P. M., before Judge Caffey; and for further hearing before the Referee on Thursday, May 16, 1935, at 2:30 P. M.)

[fol. 82] DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

L. 59, p. 80

UNITED STATES OF AMERICA, Plaintiff,

against

GUARANTY TRUST COMPANY OF NEW YORK, Defendant

#70 Pine Street, New York City,
August 8, 1935, 2:30 P. M.

Before Harold Harper, Esq., Referee

Appearances:

Hon. F. W. H. Adams, United States Attorney, by Leon E. Spencer, Esq., Assistant United States Attorney.

Davis, Polk, Wardwell, Gardiner & Reed, Esqs., by Ralph M. Carson, Esq., of counsel, attorneys for defendant.

Coudert Brothers, Esq., by P. A. Shay, Esq., of counsel, attorneys for Boris Bakhmeteff.

[fol. 83] Mr. Carson: With your Honor's consent, we will resume the examination of Mr. Bakhmeteff and I will read the two pending questions which were unanswered on account of the objection.

The Referee: Yes. Off the record.

(Discussion off the record.)

BORIS BAKHMETEFF, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination.

By Mr. Carson (continued):

Q. "In your capacity as Ambassador, were you familiar with the existence of an account standing with the——"

Mr. Carson: Off the record.

(Discussion off the record.)

Q. "Did you know the approximate balance of that account at the end of the year 1917? Just say 'yes' or 'no'."

A. About $5,000,000 it was.

Q. "In your capacity as Ambassador did you learn that Guaranty Trust Company would not pay this account on the orders of the Russian Government?"

A. Well, I don't think the orders came from the Russian Government. That was a transaction through the Govern-
[fol. 84] ment of the United States. In other words, the Government of the United States was arranging those things for us at that time.

Q. And what did you have to do with it?

A. Well, we acted together. I don't know that I had personally called, but Mr. Ughet handled those affairs and I supervised this thing in a very general manner, and Mr. Ughet acted with the Department of State and with the Department of Treasury. The procedure in detail I don't know. I know that I approved in general the movements.

Q. Mr. Ughet, as financial attache, was stationed in New York, was he?

A. He was stationed in New York.

Q. And he came to Washington and reported to you from time to time?

A. Yes, exactly.

Q. And in that way you were kept familiar with what business he transacted; isn't that so?

A. Exactly.

Q. Did you personally, while in Washington as Ambassador, prior to your resignation in June, 1922, confer with the State Department and the Treasury Department concerning this $5,000,000 account with the Guaranty Trust Company?

A. In a general way, yes.

Q. Did you personally confer with any officers of the Guaranty Trust Company on that subject?

A. No.

Q. You left that to Mr. Ughet, did you not?

A. Yes. Mr. Ughet and Mr. Polk, I think, were handling the matter.

Q. You mean Mr. Polk at the time he was Under-Secretary of State?

[fol. 85] A. Whether he was Under-Secretary or counselor, I don't know, whatever he was in the State Department, yes.

Q. And you received your information regarding the account from Mr. Ughet and Mr. Polk, did you not?

A. Exactly. Endeavors were made. I remember the State Department was very anxious to get it, but it could not be done, and as I remember, the Government really did most of the talking. That is the general impression.

Q. Will you tell us in a little more detail, Mr. Ambassador, what was reported to you by Mr. Ughet and by Mr. Polk, or anyone else in the Government with respect to the Guaranty Trust Company's willingness to pay this account?

Mr. Spencer: If your Honor please, I would like to object to the generality of that question. I would like it more specific.

Mr. Carson: I will endeavor to fix times and places if the witness can——

The Referee: Question withdrawn then?

Mr. Carson: Question withdrawn, yes, for the time being.

Q. Can you, at this time, Mr. Ambassador, state the times and the places at which you had any conferences with either Mr. Ughet or with the State Department at which you obtained information regarding the Guaranty Trust Company's willingness to pay this account, specifying with whom you had the conferences?

A. The only thing which I remember distinctly was this: Of course, it is a long time ago.

Q. Of course.

A. We were trying to get all the money, money going to [fol. 86] the Treasury under de facto control of the Treasury, and the United States of America was just as anxious as we were to get as much money as possible. I understood completely the situation or, rather, the difficulty at that time that there was—my rather extraordinary position, and persuasion probably was the most important weapon in getting decisions from anyone.

Q. I hate to interrupt you, Mr. Ambassador.

A. Yes.

Q. I just want to draw your attention to the question. I am asking the times and places of the conferences.

A. I do not remember. This is what I remember: That there were conferences in Mr. Polk's office, where he told me that all his endeavors to get that money proved to be futile and he could not get it.

Q. Could you remember approximately what year that was?

A. Of course. That was either the very end of 1917 or early in 1918.

Q. Who was present besides you and Mr. Polk?

A. I don't believe anyone.

Q. You don't remember any officer of the Guaranty Trust Company?

A. No, sir. I am quite certain there was none present that I remember.

The Referee: Does it appear to what the word "that money" refer?

By Mr. Carson:

Q. What do you mean by the words "that money" in your statement, Mr. Bakhmeteff?

A. There was something like $5,000,000 on that account, [fol. 87] with one of the accounts of the Russian Government, the exact name of which I don't know.

By the Referee:

Q. With the Guaranty Trust Company?

A. With the Guaranty Trust Company, and we were trying to get that money to be at the disposal of the United States of America, for payment of contracts, and inasmuch as it was a large sum, of course, it was very important to get the money. I don't know the details about Mr. Polk, what they officially did, in what manner they approached the Guaranty Trust Company. I know only that they did, and the final result was that that money was not obtained; in other words, the Guaranty Trust Company refused to surrender it.

By Mr. Carson:

Q. And did Mr. Polk tell you why the Guaranty Trust Company refused to surrender it?

A. He might have, but I don't remember. I presume he simply said they did not tell why, but we were in the right in asking it that way.

Q. Did you know at the time, to your present recollection, that the Guaranty Trust Company had certain claims against the State of Russia?

A. I remember that, yes. I remember that mentioned.

Q. And do you remember that the Guaranty Trust Company on its own books, or did you know that the Guaranty Trust Company on its own books, had made an offset in payment of those claims against this Government account?

[fol. 88] Mr. Spencer: If your Honor please, I am going to object to that, whether he knows or he does not know.

The Referee: The question is that of notice to him?

Mr. Carson: Purely a question of notice.

The Referee: Perhaps the question is objectionable as to form; I mean, whether he had heard, I think would be admissible. Whether he knew or not——

Mr. Carson: I will be glad to amend it that way.

The Witness: I think it was, informed in a general manner. In a general manner I did know that was the case.

Q. In a general manner you had been informed?

A. Yes.

Q. That the——

A. I knew in a general manner. I can't say who told me, but I knew that was the case.

Q. Just this question so as to avoid misunderstanding. I understand you to say that you knew as Russian Ambassador that the Guaranty Trust Company, when payment was endeavored to be obtained of this money for the State of Russia, had made an offset on its books that held this Government account?

A. I would say what I knew was this: That the reason, or all of the reason, why they refused to give this money was the fact that they made that offset.

Q. Could you, for the benefit of both of us, try to fix how and when you obtained that information; from whom and at what time?

[fol. 89] A. That I could not remember. It was spoken of in general, but I cannot remember.

Q. Did you have more conferences than that single conference which you have described with Mr. Polk at the end of 1917 or the beginning of 1918?

A. I had many conferences, and it was constant and all the time, when he was extremely helpful, and I would not be surprised if this question was discussed many times, but I distinctly remember one conference, that I distinctly remember. The others I don't remember, but I would not be surprised if we discussed that many times.

Q. You also discussed the same subject with Mr. Ughet, I understand, when he reported to you?

A. Of course, it was a constant discussion from day to day.

Q. Do you recall the $50,000,000 bank credit which the Russian Government had obtained in the United States in 1916, payable——

A. You mean the National City Bank?

Q. Yes, payable in 1919?

A. Yes; I remember in a general way.

Q. And do you recall an interest installment falling due on that credit in July, 1919?

A. Rather, that we stopped payment of interest that time; is that what you mean?

Q. Do you recall in regard to the terms there was an interest installment due and to be paid some time in June or July, 1919?

A. I don't remember the date when it was paid. I remember we paid interest a number of times; that it was stopped, but when I don't remember.

Q. Did you have anything to do with any attempt to use the $5,000,000 account with the Guaranty Trust Company in [fol. 90] payment of that interest installment in 1919 or any part of it?

A. You mean particularly for that?

Q. Yes.

A. No. I was in Paris at that time and Mr. Ughet was charge d'affaires.

Q. So Mr. Ughet was handling the whole interest of the State of Russia in this country at that time?

A. Yes.

Q. After the change in administration, do you recall having discussed the matter of the Russian Government account with the Guaranty Trust Company with Mr. Hughes, Secretary of State?

A. I don't believe I did. As a matter of fact, I remember distinctly that that question did not come up again.

Q. Do you recall an attempt made at the end of 1921 to raise funds in the United States for Russian relief?

A. 1921, oh, yes, with Mr. Hoover. I do remember that, exactly, that question of getting money for the relief of famine in Russia, correct. I remember that, yes. I remem-

ber a conference with Mr. Hoover. I think he was Secretary of Commerce at that time.

Q. Do you have any recollection of conferring with anyone in the Department of State, either with Secretary Hughes or any other official, with regard to the raising of a famine fund?

A. No, I distinctly remember not having conferred at that time.

Q. I would like to read a passage from a letter that Mr. Hughes, Secretary of State, wrote the Guaranty Trust Company on December 2, 1921, and ask if that refreshes your recollection.

A. December 2nd?

[fol. 91] Q. December 2, 1921. "In connection with certain projects for the organization of relief for the famine sufferers of Russia, it has been reported to the Department of State that you have on your books a credit of approximately $5,000,000 in favor of the Government of Russia or of some organ of the Russian Government." I would ask if that refreshes your recollection that you or some member of your staff discussed that matter with the Department of State?

A. Mr. Ughet might have discussed that matter, but I did not. I distinctly know that I did not. As a matter of fact, I distinctly know I did not discuss any matter of relief with it.

Mr. Carson: I introduce copy of a letter dated December 9, 1921, from Mr. Sabin, as Chairman of the Board of the Guaranty Trust Company of New York, to Mr. Secretary Hughes, and ask to have it marked for identification as Exhibit No. 7.

(Copy of letter dated December 9, 1921, marked Defendant's Exhibit No. 7 for identification.)

Q. I hand you this letter, marked Defendant's Exhibit No. 7 for identification, and ask if you will be good enough to read it and state whether you ever saw the original or a copy of that letter at or about the date thereof?

A. No. I didn't know of the existence of this letter.

Q. You did not see the original or a copy in 1921 or thereafter?

A. No.

Q. You have read the Exhibit No. 7 for identification, have you?

A. You mean this letter?

[fol. 92] Q. Yes.

A. I have.

Q. Will you state whether, in 1921 or thereafter, you learned the substance of this letter in any way?

A. No.

Q. You have no recollection of the contents of this letter being communicated to you orally?

A. No; not to my memory; not to my best recollection.

Q. Now, I show you another letter from Charles H. Sabin to Mr. Polk, as Counselor of the Department of State, dated June 9, 1919, Exhibit No. 4 for identification, and ask if you will be good enough to read that?

A. That was the time when I was in Paris, at the Peace Conference. What was your question?

Q. I want to ask you whether in 1919 or thereafter you saw the original or a copy of this letter.

A. No; I don't remember seeing it. I might add that was just the time when I was in Paris. Mr. Ughet was handling matters, so it would not come to my attention.

Q. I understand you resigned as Russian Ambassador as of June 30, 1922, Mr. Bakhmeteff?

A. Yes, that is right.

Q. And thereafter you had nothing further to do with the conduct of the affairs of the State of Russia in this country?

A. None whatever.

Mr. Carson: I think that is all I have with this witness. Direct examination closed.

Gross-examination.

By Mr. Spencer:

Q. Mr. Bakhmeteff, prior to June, 1922, and subsequent to January, 1915, can you state what your Ambassador [fol. 93] status was in this country?

A. I was accredited as Ambassador, as far as I remember, on July 5, 1917, and my position remained unimpaired, as there is no other status except as the status of Ambassador, until June 30, 1922. In other words, there was no official change in my status so far as the United States Government was concerned. They recognized me; they continued to recognize me as Ambassador and that is all.

Q. Did you at any time during this period ever have any communications with the Soviet Government or the Union of Soviet Socialist Republics?

A. None whatever.

By the Referee:

Q. You mean they never wrote you at all?

A. Oh, yes, they did write me. This is off the record.

(Discussion off the record.)

The Witness: There was a circular telegram that was sent to all Ambassadors.

By Mr. Spencer:

Q. You have referred to having received a communication?

A. It was one that was sent to all the charge d'affaires inviting them to accept allegiance to the Soviet Government and, like I would say the great majority of the diplomatic representatives, the telegram was ignored.

Q. Can you state at about what time that telegram was received?

A. I would say in November, 1917.

[fol. 94] Q. And with that one exception you received no further communication from the Soviet Government?

A. No.

Q. Did you at any time discuss any affairs of the Soviet Government with the State Department?

A. Affairs of the Soviet Government?

Q. Yes.

A. What do you mean by "affairs of the Soviet Government," of the general conditions or what?

Q. Any——

A. My status or my attitude towards them?

Q. That is right.

A. Oh, yes; I presume that I wrote Secretary Lansing about that. My position was very clear.

Q. What was that position?

Mr. Carson: I object to that question. I don't think the witness can characterize his position.

The Referee: Well, this is the contents of a communication that he sent?

Mr. Spencer: So I understand.

Mr. Carson: Then I object to that as not the best evidence. I didn't so understand.

The Referee: It must be sustained on the ground that it is not the best evidence.

Mr. Spencer: If your Honor please, I take an exception to that because of the unusual circumstances. I don't believe the rule applies.

The Referee: Well, my ruling is simply that the witness is being asked to state the contents of a document.

Mr. Spencer: Which he himself——

[fol. 95] The Referee: I assume the document is in the State Department and, therefore, can be produced by the Government, if it is material or important.

Mr. Spencer: If your Honor please, I would like the record to state that an examination has been made for any such letter as this without knowing the date of any such letter, and it could not be found. I would like the notation to be made on the record or is the record to be held open in some manner so that the non-existence of the letter may be established? I don't know the date of it.

The Referee: What do you say as to that, Mr. Carson? Are you willing to accept Mr. Spencer's statement as to the fact of the search?

Mr. Spencer: Off the record.

(Discussion off the record.)

Mr. Carson: I would like to suspend an answer to that question pending a further inquiry into the matter.

The Referee: Then the ruling will stand.

By Mr. Spencer:

Q. Mr. Bakhmeteff, on your direct testimony you have stated that "we were" very anxious to obtain all the money possible from the Guaranty Trust Company and other sources. To whom did you refer by "we"?

A. I meant the United States Government and the Russian Embassy, which were cooperating, in what we believed at that time to be the best American interests.

[fol. 96] Can you state the situation surrounding your resignation as Russian Ambassador?

Mr. Carson: I object to that as immaterial.

The Referee: Overruled.

The Witness: It is a very long story.

Mr. Carson: Exception.

The Witness: It is all in the record in the State Department, I presume, all the circumstances.

Mr. Carson: You mean it is comprised in written communications?

The Witness: Communications, memoranda, yes. There was published, as a matter of fact, in the papers a letter which I wrote Secretary Hughes and his answer.

Mr. Carson: Objected to as calling for material not the best evidence.

The Referee: Well, the question is somewhat general and its materiality is not apparent to the Referee.

Mr. Spencer: Of course, I can only accept the answer. I am not sure whether he is going to give an answer.

The Referee: What do you hope or expect to prove by it?

Mr. Spencer: That the resignation of Mr. Bakhmeteff was occasioned by the fact that he had long continued to represent a hypothetical State and that his continuation as an official would not be warranted.

The Referee: I cannot see that anything is material there except the actual status and the date of the termination of the status.

[fol. 97] Mr. Spencer: My only doubt is whether we have got a statement of his actual status. That has given me some concern.

Mr. Carson: I would like to put on the record in support of my objection to the immateriality of this type of question, so it will not be necessary to say that the status was hypothetical and to state to your Honor that Mr. Bakhmeteff's status of Russian Ambassador was affirmed in these United States to be equal to the State of Russia in documents emanating from the State Department up to 1931.

The Referee: Now, we have counsel testifying, but it seems to me it was up to the State Department either to continue to receive him as Ambassador or to refuse to do so. So long as they continued to receive him as Ambassador it would seem to me that he had full ambassadorial status. At least, the Court would be bound by the action of the political department in that respect.

Mr. Carson: It has been so held by the Federal Courts of this Circuit.

Mr. Spencer: I would not want to acquiesce in that conclusion. I don't think I have any further questions.

Redirect examination.

By Mr. Carson:

Q. Mr. Bakhmeteff, you are the same Mr. Bakhmeteff as Russian Ambassador who was a plaintiff in a suit entitled State of Russia against the Lehigh Valley Railroad Company, are you not?

A. Yes.

[fol. 98] Q. And which was commenced about the year 1918, was it?

A. As far as I remember.

Mr. Carson: That is all.

The Referee: That is all today, gentlemen?

Mr. Carson: That is all with this witness, Mr. Referee. I wanted some time to offer, or to re-submit to your Honor most of the exhibits marked for identification. I don't like to do that now. It might wait until the deposition is closed.

The Referee: Yes.

Mr. Shay: Is the deposition open with reference to Mr. Bakhmeteff now?

Mr. Carson: It is closed, I understand.

Mr. Shay: There was some discussion before about leaving it open.

Mr. Carson: Oh, Mr. Spencer wanted—off the record.

(Discussion off the record.)

The Referee: By agreement of counsel for the United States and the Guaranty Trust Company, Mr. Bakhmeteff's recollection of the contents of his communication to the State Department previously inquired into will be placed upon the record subject to a motion to strike in the event that it shall not be shown that secondary evidence is admissible.

Recross examination.

By Mr. Spencer:

Q. What is your recollection, Mr. Bakhmeteff, of the contents of the memorandum which you handed to Mr. Polk?

A. It was not to Mr. Polk.

[fol. 99] The Referee: Answer as well as you can.

The Witness: The object or the purpose, or the purposes, of that communication was to make clear the attitude which I took towards the Soviet Government. My attitude at that time was that we had not recognized, I had not recognized, the Soviet Government as a government which lawfully represented Russia, and in view of that I refused to have any communications with it or consider it as having any authority in so far as I am concerned. That is about all. Is that clear?

Mr. Carson: That is all in your answer.

The Referee: Have you got the date of this communication now?

Mr. Carson: Can you remember the approximate date of it?

The Witness: Yes, I said I presume it was in November, 1917.

Mr. Carson: And I understand that was your only communication on the subject to the United States Government; is that correct?

The Referee: Written communication.

Mr. Carson: Yes, written communication.

The Witness: There might have been informal communications of different character, but I remember this as being a communication of basic character, I would say, which clearly defined my attitude and my position. I presume that the State Department knew about that attitude, anyhow, before.

[fol. 100] By Mr. Spencer:

Q. Your attitude never changed?

A. No. I could not have remained as Ambassador if I had.

Mr. Spencer: That is all.

Mr. Carson: That is all. I think it will be unnecessary for Mr. Bakhmeteff to come back.

The Witness: I will be very glad to come back if necessary.

Mr. Carson: Unless the Referee would like you to come back to sign.

(Discussion off the record.)

(Whereupon, at 3:30 o'clock P. M. an adjournment was taken to September 17, 1935, at 2:30 o'clock P. M., at the same place.)

[fol. 101] DEPOSITION OF BORIS BAKHMETEFF

BORIS BAKHMETEFF, resumed the stand and testified further as follows:

Redirect examination.

By Mr. Carson:

Q. Mr. Ambassador, at page 86 of the record, at the foot of the page, appears the question of the Referee: "You mean they"—meaning the Soviet Government—"never wrote you at all?" And your answer appears: "Oh, yes, they did write me. This is off the record." Is that a correct statement of the answer which you desired to make?

A. It does not convey the idea which I wanted to convey. I think the idea is correctly stated on the next page. The only communication which was made was when they sent me their circular telegram and I never answered it.

The Referee: It is fairly clear on the record as it is now.

Mr. Carson: I think it is. The witness called my attention to it and wished to put it beyond all doubt.

Q. Mr. Ambassador, in your previous testimony in answer to the Referee's question at page 79 you said that, "We were trying to get that money to be at the disposal of the United States of America for payment of contracts." Would you describe what contracts you meant in that answer?

A. During the war extensive contracts were entered into by the Russian Government with different American com-
[fol. 102] panies. I do not remember the exact figure, but they amounted to many hundreds of millions of dollars. At the time when the Government which I represented fell, those contracts were still in force and it seemed to be important to us, from the point of view of Russian interests, and it seemed to me, as I understand, that it was important from the American point of view for the American Government, to have as little trouble on those contracts as possible, and the endeavor was, officially on our part, to liquidate those contracts with as little trouble and as little litigation as possible.

That endeavor, as I sincerely believe, was backed very strongly by the American Government, and the American

Government assisted us in every way to do so; in other words, we got the cooperation of the institutions of the United States which dealt with purchases of war, and the money which was to be used for that was the money which was still on the balances of the Russian Government, at the time when the provisional government fell, that was the money which we wanted to get for that purpose principally.

Q. And that money so on the balances of the Russian Government included the $5,000,000 account with the Guaranty Trust Company?

A. In our mind it included all the monies that we could get.

Q. In referring to "we" and "us" in your answer, a minute or two ago, you mean the Russian Embassy?

A. I meant the Russian Embassy as a collective institution which has many branches. The Russian Embassy as a diplomatic institution did not handle the details, but it was [fol. 103] part of the Russian organization which was headed by the Russian Embassy.

Q. And they took place under your supervision?

A. Under my general supervision and direction.

Q. In your previous testimony you spoke of Mr. Polk's and the State Department's statements to you with reference to the reply of the Guaranty Trust Company as to payment upon the $5,000,000 Russian Government account. You also spoke of approaches made to the Guaranty Trust Company by the State Department. Will you state now in case there be any ambiguity, whether the actions of the State Department or of the Treasury Department, if any, with reference to the Guaranty Trust Company's payment of this account were made with your knowledge and approval as Russian Ambassador?

A. I would say in general that any actions of members of the American Government were those of a friendly go-between. They tried to help us to get that money. Naturally, we were the principal in the case and, naturally, all transactions were made on behalf of the Russian Embassy. I could not state in detail what came first in any detailed transaction.

Q. You cannot recall any particular negotiation?

A. No, but in general I would say that, of course, everything that was done was done on behalf of the Russian Embassy and the members of the American Government, the State Department, the Treasury Department and others

were assisting the policy of the Russian Embassy which they endorsed.

Q. And which you personally supervised and endorsed?

A. In a general way, yes.

[fol. 104] Q. Did you know a Mr. D. Ter-Assatouroff as an official of the Russian Embassy?

A. I remember that a person by that name was on Mr. Ughet's staff. Whether he was on the diplomatic list or not I do not recall.

Q. Do you recall at this time any conferences with or reports from him on the subject of the $5,000,000 account with the Guaranty Trust Company?

A. No, I do not remember that.

Mr. Carson: I have no more questions of this witness.

Recross-examination.

By Mr. Spencer:

Q. Mr. Bakhmeteff, in your previous testimony and just now on redirect you have spoken with reference to an effort which was made at one time apparently to get that money, and as you state in your testimony, "We were trying to get that money." Does that refer to any act on your part, and if so, what act?

Mr. Carson: What page is that?

Mr. Spencer: 79.

A. It does not refer to any specific act of mine. As I explained, the details of the executive part in finance was not in my hands, but it was in the hands of Mr. Ughet. So far as I was concerned I was interested in getting as much money as possible, and whenever it was necessary to give any endorsements or help any of the staff to do anything, I did it, or in many cases, I took up matters with the [fol. 105] State Department. My activities were limited to that.

Q. And the use of the word "we" here does not refer to any joint attempt on your part and on the part of someone else?

A. I speak of "we" as collectively for the Russian institutions of which I was the head and had the full power and so naturally everything was done in my name, although not by my hands.

Q. You can state pretty definitely though that you yourself never did negotiate any effort to obtain from the Guaranty Trust Company that fund?

A. I can state that positively. I have not seen any officials of the Guaranty Trust Company and except a conversation with Mr. Polk and probably with Mr. Ughet, I do not believe I ever conversed on that matter with anyone else.

Mr. Spencer: That is all.

The Referee: That concludes the examination of this witness?

Mr. Carson: Yes, sir.

B. Bakhmeteff.

Sworn to before me this 19th day of September, 1935.
Matthew V. Stepsis, Notary Public, Kings County.
Kings Co. Clerk's No. 829, Register's No. 7195.
N. Y. Co. Clerk's No. 341, Register's No. 7S210.
Commission Expires March 30, 1937. (Seal.)

[fol. 106] Mr. Carson: I would like at this time, on the basis of all the testimony, to offer formally in evidence, in case such an offer might subsequently be deemed necessary as part of these depositions, Defendant's Exhibits 1, 2, and 3 for Identification, which have already been offered and, as I recall at the time, excluded by your Honor.

(Discussion off the record.)

Mr. Spencer: The Government objects to the receipt of these exhibits for identification in evidence on the ground it has not been shown that these letters were actually sent by the parties sending them, and on the ground that they are incompetent, irrelevant and immaterial.

The Referee: The objection is sustained. At the present time there is no proof that Defendant's Exhibit 3 for Identification emanated from the Guaranty Trust Company, and until that is shown, there is no basis for the introduction either of that exhibit or of Exhibits 1 and 2 for Identification, which it may render competent when properly authenticated.

This hearing, of course, is merely for the purpose of taking the testimony of two witnesses, and their testimony has not been sufficient to authorize the receipt of these letters, Exhibits 1, 2, and 3.

It is possible that other evidence may be offered by affidavit which will render these exhibits competent, and this ruling is, of course, made without prejudice to the Court [fol. 107] receiving letters in evidence upon the hearing of the motion, if it deems them competent upon the evidence then before it.

Mr. Carson: May I respectfully except? In view of your Honor's ruling I will make no further offer of exhibits for identification in evidence at this time.

(Whereupon, at 3:35 o'clock P. M. the hearing in the above-entitled matter was closed.)

[fol. 108] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF DIMITRY G. TER-ASSATOUROFF

DOMINION OF CANADA,
Province of Quebec,
City and District of Montreal, ss:

Dimitry G. Ter-Assatouroff, being duly sworn, says:

I was born in the former Empire of Russia, now part of the territory of the Soviet Union, and am Russian by nationality. I now reside permanently at No. 1423 St. Matthew Street, City and District of Montreal, Dominion of Canada.

1. From 1909 to December 1922 I occupied various official positions in the Credit Chancery and other departments of the Ministry of Finance of the Imperial Russian Government and (after the February 1917 Revolution) the Provisional Russian Government, being sent abroad at various times during such period on official missions for the Ministry of Finance. In this capacity I became thoroughly familiar with the administrative structure of the Ministry [fol. 109] of Finance and with its various officials. The so-called Section Etrangere of the Ministry of Finance was a department of the Credit Chancery of the Ministry of Finance designated as the Foreign Section because it handled the foreign financial transactions of the Credit Chancery which, in turn, was the banking department of the Minis-

try. Thus the Section Etrangere was an agency or subdivision of the Russian Government. The administrative head of the Credit Chancery, under whose jurisdiction was the Section Etrangere and who supervised all its payments abroad for account of the Ministry of Finance, was during 1917 and until the Soviet Revolution of November 7, 1917, Conrad de Sahmen, personally known to me in Petrograd. In the Soviet Revolution Mr. de Sahmen lost his position, and I subsequently met him in London as an exile. I understand he now resides in Paris.

2. By order signed on January 4, 1917, Russian style (January 17, 1917, modern style), by Peter Bark, as Minister of Finance of the Imperial Russian Government, I was designated as Assistant Representative of the Ministry of Finance with the Russian Supply Commission in New York. On April 12, 1917, modern style, I arrived in New York and took up my duties as such Assistant Representative, in which duties I was the immediate subordinate of Mr. Serge Ughet, who then had the title of Representative of the Ministry of Finance with the Russian Supply Commission in New York. Shortly after my arrival and before November 7, 1917, Mr. Ughet was designated by the Minis- [fol. 110] try of Finance to serve as Financial Attache of the Russian Embassy in the United States under Mr. Boris Bakhmeteff, Russian Ambassador to the United States. Nevertheless my duties continued to be those of an assistant to Mr. Ughet in the management and supervision of the financial business of the Russian Government in the United States. Shortly after the Bolshevik Revolution of November 7, 1917, I was designated by the Russian Ambassador and by Mr. Ughet as Assistant Financial Attache of the Russian Embassy in the United States. My offices as such Assistant Financial Attache were until about the end of 1919 in the Flatiron Building in New York City.

3. In my capacity as Assistant Representative of the Ministry of Finance with the Russian Supply Commission in New York, I learned from Mr. Ughet and from the records of the said Financial Department that the Russian Government had an account with Guaranty Trust Company of New York, carried under the name Section Etrangere Ministere des Finances, and in the latter half of 1917 I had conversations and correspondence on the general subject of entries in this account with one Mr. Putnam, Treasurer of

Guaranty Trust Company. From the correspondence which passed through the Financial Department I learned that about July 1917 Mr. Ughet as Financial Attache made a payment of $5,000,000 to the credit of this account. Toward the end of 1917 it was my understanding that the credit balance in this account was about $5,000,000.

[fol. 111] 4. After the Soviet Revolution of November 7, 1917, it became the policy of the Russian Embassy in the United States, as I learned in the course of my duties from conversations with Mr. Ughet and the Russian Ambassador and with various New York bankers and from the records of the Financial Department, to have placed at the disposal of the Embassy all Russian Government moneys in the United States, under whatsoever title such moneys might be held by the depositary banks, in order to draw upon the same for payments in the United States upon Russian Government loans, supply contracts, and other obligations of the Russian Government. These loans, contracts and obligations aggregated in amount vastly more than the total of moneys at the disposal of the Russian Embassy.

In pursuance of this policy (as I also learned in the course of my duties aforesaid) Mr. Ughet arranged for the transfer of practically all Russian Government moneys with National City Bank of New York to the account of Mr. Bakhmeteff, as Russian Ambassador, in the manner set forth in the letter dated November 28, 1917, of which a copy is attached hereto marked Exhibit 5 for identification. I was familiar with this form of letter at the time. Mr. Ughet informed me that he would make a similar request of Guaranty Trust Company of New York with reference to the Section Etrangere Ministere des Finances account. Subsequently, under date of December 12, 1917, the Financial Department received a letter of refusal addressed to Mr. Ughet over the signature of Charles H. Sabin, as President of Guaranty Trust Company, of which letter a copy is attached hereto marked Exhibit 6 for identification.

On at least one occasion thereafter during 1918 I accompanied Mr. Ughet to the offices of Guaranty Trust Com-
[fol. 112] pany of New York and met a man whom he introduced to me as Mr. Sabin and whom I understood to be President of Guaranty Trust Company. I cannot fix the exact date of this conversation, nor can I recall the exact words used. The substance of what Mr. Ughet said was

that he requested Guaranty Trust Company to place at the disposal of the Russian Embassy in the United States the Section Etrangere Ministere des Finances account, and that the Russian Ambassador was at that time legally the Russian Government to which the account belonged. Mr. Sabin said in substance that Guaranty Trust Company would not comply with this request. On two or three occasions during 1918 and 1919 I accompanied Mr. Ughet to the office of Mr. Albert Breton, then Vice-President in Charge of the Foreign Department of Guaranty Trust Company. On each of these occasions substantially the same conversation was held with respect to the Section Etrangere Ministere des Finances account as I have above described in connection with Mr. Sabin. I am unable to recall the exact words used in the conversations with Mr. Breton or to fix the exact dates thereof, except that they all took place before the last installment of interest due July 10, 1919, on a $50,000,000 loan made by Guaranty Trust Company and other New York Banks to the Russian Government. This loan had been arranged in June 1916 while I was with the Ministry of Finance in Petrograd.

At the time of the conversations just referred to I do not recall having known exactly what claims Guaranty Trust Company had against the Russian Government except that I did know that Guaranty Trust Company as member of [fol. 113] a syndicate of banks had a claim for 150,000,000 rubles against the Russian Government which were to serve as collateral for a loan, and I also assumed that Guaranty Trust Company with other New York banks had had ruble deposits in Russia at the time of the Soviet Revolution. My understanding at the time of the said conversations with Mr. Sabin and Mr. Breton was that Guaranty Trust Company did have claims of some kind against the Russian Government arising out of the Soviet Revolution and that it insisted upon retaining the Section Etrangere Ministere des Finances account to satisfy these claims. I cannot now recall or identify the source from which I received this understanding.

5. At the beginning of 1922 I learned in some fashion (which I cannot now recall or identify) that Guaranty Trust Company had been requested to make the Section Etrangere Ministere des Finances account available to the Russian Embassy for purposes of Russian Relief, and that Guar-

anty Trust Company had refused to do so by reason of its claims against Russia.

6. I resigned my position as Assistant Financial Attache in December 1922.

Dimitry Ter-Assatouroff.

Sworn to before me at the City of Montreal in the Province of Quebec this 7th day of October, 1935. J. Mulcair, Notary Public. (Seal No. 319, Dominion of Canada, Province of Quebec, District of Montreal.)

[fol. 114] IN THE SUPERIOR COURT FOR THE PROVINCE OF QUEBEC

To All Whom These Presents May Concern:

I, the undersigned, J. A. Valiquette, Deputy Prothonotary, in the District of Montreal, of the Superior Court for the Province of Quebec in the Dominion of Canada, the same being a Court of Record.

Do Hereby Certify, that John Mulcair whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument and thereon written, was, at the time of taking such proof and acknowledgement, a Notary Public, in and for said District of Montreal, residing therein, duly commissioned and sworn, and authorized by the laws of said Province to administer oaths, to take the acknowledgements and proofs of deeds or conveyances, for land, tenements or hereditements in said Province, to be recorded therein. And further that I am well acquainted with the handwriting of said John Mulcair, Notary Public, and verily believe that the signature to said certificate of proof or acknowledgement is genuine.

Given under my hand and the seal of the said Superior Court at the City of Montreal, in the said Province of Quebec, this seventh day of October in the year of Our Lord one thousand nine hundred and thirty-five.

J. A. Valiquette, Deputy Prothonotary of the said Superior Court.

[Revenue Stamp.]

[fol. 115] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF NICHOLAS S. KARINSKY

STATE OF NEW YORK,
County of New York, ss:

Nicholas S. Karinsky, being duly sworn, says:

1. I was born in Russia and was a Russian subject until 1930 when I became a citizen of the United States. Until 1920 I resided in Russia. I am a graduate of the Law School of the Imperial University of Moscow and a lawyer by profession. I was admitted to the Bar in Russia in 1897 from which time until the early part of 1917 I was a practicing attorney with an office in Moscow. I practiced law before all the courts of the Empire, including the Ruling Senate, which was the highest court of the Empire.

In 1917, after the establishment in Russia of the Provisional Government known first as the Government of Prince [fol. 116] Lvov and subsequently as the Kerensky Government, I was appointed Attorney-General of the Court of Appeals of the St. Petersburg Judicial District. I occupied this post from May 1917 to August 1917, when I was appointed by the Provisional Government as the Presiding Justice of the Court of Appeals of the St. Petersburg Judicial District. I resigned late in September 1917, when I resumed my law practice. Later, in 1920, I was appointed Minister of the Interior in the Government of General Denikin.

2. On or about October 15, 1917, I came from Moscow to Petrograd on personal business and stayed in Petrograd until about the middle of November, 1917. During that time I was in constant touch with the members of the Provisional Government, who on many occasions consulted with me and sought my advice on various Government matters. More particularly I was in constant communication with the Minister of Justice Maliantovich, the Minister of Finance Bernadsky, and with the then President of the Provisional Government Alexander Kerensky.

I was in Petrograd on October 25, 1917, when the Bolshevik uprising took place which overthrew the Provisional Government and replaced it with the Soviet Government. On that date all the Ministers of the Provisional Government

were arrested by the revolutionary forces, who thereupon formed the first Soviet Government. I was in touch with the said Ministers just a few hours before their arrest.

As soon as the Ministers were arrested, the Assistant Ministers convened in a meeting called by Assistant Minister [fol. 117] of Justice Demianoff, at which I was present, being called as a consultant. This meeting was held in the private apartment of the Assistant Minister of Finance, since his office was already taken by force of arms by the revolutionary government. The Assistant Ministers decided immediately to form a new government to oppose the revolutionary forces which then were taking control of the city. The proposed new government, however, was never formed, because all the Assistant Ministers were on that day either arrested or forced to flee from Petrograd.

From personal observation and from first hand information which I received at that time I know that all the various Government departments, such as the office of the President, the offices of the Minister of Justice, the offices of the Minister of Foreign Affairs, the offices of the Minister of the Interior, the offices of the Minister of Finance, were seized by the Bolshevik revolutionists and were closed; that none of the senior officials returned to their former posts; that all Government institutions were seized by the revolutionary Soviet Government and the whole administrative, executive and legislative machinery of the Provisional Government ceased to function, being replaced within a few days by the newly created organs of the Soviet Government under decrees of the All-Union Congress of the Soviets then sitting in Petrograd.

3. The office and employment of the Ministers of the Provisional Government thus ceased on or about October 25, 1917. There was no succession of personnel as between the Provisional Government and the Soviet Government estab- [fol. 118] lished on or about October 25, 1917. From the point of view of the law of the Provisional Government, of course, there was no succession of power and jurisdiction from the Provisional Government to the Soviet Government, but on the contrary the line of succession from the Provisional Government followed the personnel of the Provisional Government, who fled to the east of Russia and constituted opposition governments under the leadership first of Admiral Kolchak and then of General Denikin. From

the point of view of Soviet law also, there was no succession between the Provisional Government and the Soviet Government, in that the Soviet leaders considered the Soviet Government to be a revolutionary government whose function it was to overthrow and destroy not only its predecessor government but all the institutions of property and society which had grown up thereunder. Hence the Government departments and the Ministries which had existed under the Provisional Government were liquidated and terminated by the Soviet Government, in law as well as in fact, instead of being taken over by the Soviet Government. The executive organ of the Soviet Government established by decree of the All-Union Congress of Soviets on or about October 26, 1917, was the Council of People's Commissars.

I have examined the Constitution of the R. S. F. S. R. which provides for the establishment of a Commissariat of Finance and the decrees of July 10, 1918, and November 12, 1923, promulgated by the R. S. F. S. R. and the Union of Soviet Socialist Republics respectively, which set forth in detail the functions of the Soviet Commissariat of Finance. [fol. 119] Nowhere did I find any reference to the former Ministry of Finance of the Russian Imperial or Provisional Governments. I have likewise examined a statement in a Russian Work entitled "Abbreviated Soviet Encyclopedia" and appearing from the title page thereof to have been published at Moscow by a Soviet Government agency in 1930, which statement appears at page 556 under the word "Narkomfin" (People's Commissariat of Finance). This statement in part reads as follows:

"The People's Commissariat of Finance was established by Decree of October 28, 1917, in place of the liquidated Ministry of Finance."

4. All dates mentioned in this affidavit are given according to the Russion old style, which was in effect in Russia at the time of the events described and which is thirteen days behind the American calendar.

Nicholas S. Karinsky.

Sworn to before me this 7th day of October 1935.
Wm. H. Bruder, Notary Public, Bronx County No. 122.

[fol. 120] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF HAROLD STANLEY

STATE OF NEW YORK,
County of New York, ss:

Harold Stanley, being duly sworn, says:

I am President of Morgan Stanley & Co. Inc., a New York corporation with its office and place of business at No. 2 Wall Street, New York, N. Y. In 1918 and 1919 I was a Vice-President of Guaranty Trust Company of New York.

1. During 1918 and 1919 as such Vice-President I was familiar in a general way with the dollar accounts formerly kept by Russian banks and by the Russian Government with Guaranty Trust Company and with the ruble accounts of Guaranty Trust Company in various Russian banks. The title of the said Russian Government dollar account on the books of Guaranty Trust Company was Section Etrangere [fol. 121] Ministere des Finances. I was also familiar with the fact that in February 1918 Guaranty Trust Company closed all the said dollar accounts on its books and in the form of a set-off applied the credit balances therein against the dollar equivalent of the ruble balances owed it by various Russian banks, on the ground that these banks had been taken over by the Soviet Government. In the course of my duties during 1918 and 1919 I had numerous conferences on the subject of the said Russian accounts with Mr. Charles H. Sabin, then President of Guaranty Trust Company of New York, now deceased.

In 1918 and 1919 I was acquainted with Mr. Serge Ughet, Financial Attache of the Russian Embassy in the United States. Mr. Sabin informed me at some time (which I have no means of fixing exactly) between the Soviet Revolution of 1917 and the meeting hereinafter described that in conversations with the said Ughet he had on behalf of Guaranty Trust Company of New York refused to pay to the Russian Government the said account entitled Section Etrangere Ministere des Finances.

2. On June 18, 1919, a large loan made by a group of New York banks to the Russian Government matured and be-

came payable. This group of banks included Guaranty Trust Company of New York, and The National City Bank of New York had acted as manager of the group with respect to the loan. Shortly before the loan was to mature I on behalf of Guaranty Trust Company attended a conference of representatives of this group of banks at the office of John H. Fulton, then a Vice-President of National City Bank. The said Mr. Ughet also attended this confer- [fol. 122] ence. There took place a general discussion as to whether there were any means of preventing a default on the said loan and of paying interest thereon. Mr. Ughet requested Guaranty Trust Company to make certain Russian Government funds which it held available in this emergency, by which expression I understood him to refer to the Section Etrangere Ministere des Finances account above mentioned. I objected to this statement and said in substance that Mr. Ughet had no right to make it, because he had known for some time that this money was not available unless the Russian Government paid Guaranty Trust Company what it owed to them.

Harold Stanley.

Sworn to before me this 18th day of October, 1935.
Matthew V. Stepsis, Notary Public, Kings County.

[fol. 123] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF CHARLES SARGENT

STATE OF NEW YORK,
County of New York, ss:

Charles Sargent, being duly sworn, says:

I am a member of the firm of G. M.-P. Murphy & Co., investment bankers having their office and place of business at No. 52 Broadway, New York, N. Y., and in the year 1919 was a member of the firm of Kidder Peabody & Co., investment bankers having their office and place of business at New York, N. Y.

Kidder Peabody & Co. were a member of the group of New York banks who in June 1916 extended a credit of

$50,000,000 to the Imperial Russian Government. This credit matured and became payable in June 1919.

I have read the affidavit of Harold Stanley herein verified October 18, 1935, and recall having been present at the meeting of representatives of a New York banking group in [fol. 124] June 1919 to which Mr. Stanley refers in the said affidavit. To the best of my recollection Serge Ughet or John H. Fulton, Vice-President of National City Bank, said at such meeting that the Russian Government money with Guaranty Trust Company should be used to pay the interest on the Russian Government loan which would soon fall due. This loan was in the amount of $50,000,000, and the interest payable on July 10, 1919, was $1,625,000. I recall that Mr. Stanley said in positive tones that Guaranty Trust Company would not make this money available. To the best of my recollection he said in substance that Guaranty Trust Company had a set-off against this money, but I do not recall the details of what he said on that subject.

Charles Sargent.

Sworn to before me this 18th day of October, 1935.
Matthew V. Stepsis, Notary Public, Kings County.

[fol. 125] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF STUART H. PATTERSON

STATE OF NEW YORK,
County of New York, ss:

Stuart H. Patterson, being duly sworn, says:

I am and have been since December 3, 1917, Comptroller and since April 15, 1929, Vice-President of Guaranty Trust Company of New York, and in such capacity have and have had general supervision of all its accounts, including among others the accounts in dollars which the Russian Government and various Russian banks maintained with Guaranty Trust Company in December 1917 and the accounts in rubles which Guaranty Trust Company maintained in December 1917 with various Russian banks in Russia.

1. Among the said Russian accounts so under my general supervision was an account in dollars on the books of [fol. 126] Guaranty Trust Company of New York entitled "Section Etrangere Ministere Des Finances," or Foreign Section Ministry of Finance, which I understood to be an agency or subdivision of the Russian Government. In December 1917, according to the books of Guaranty Trust Company, there stood to the credit of this account the sum of $4,976,722.78. This amount, as is shown by the said books and by the attached Exhibits 8 and 9, was the balance remaining from a payment made to the credit of the said account by Mr. Serge Ughet, Financial Attache of the Russian Embassy in the United States, by a check in the amount of $5,000,000 on July 13, 1917. The previously existing balance in the Section Etrangere Ministere des Finances account had been exhausted and an overdraft created on July 2, 1917, according to the books of Guaranty Trust Company of New York, by the transfer on that date of $5,000,000 out of said account to the special account of Russo-Asiatic Bank by cable order of the Ministry of Finance. Mr. Ughet's said check of $5,000,000 was enclosed in a letter from Mr. Ughet to Guaranty Trust Company dated July 12, 1917, of which a copy is hereto attached marked Exhibit 8. Inasmuch as Mr. Ughet's statement that this payment would leave a balance of only $3,784,510.22 did not accord with our records, Guaranty Trust Company replied to Mr. Ughet under date of July 13, 1917, with a letter of which a copy is attached marked Exhibit 9. This letter was signed by Mr. N. D. Putnam, now deceased, who was then Treasurer of Guaranty Trust Company.

Mr. Ughet's payment above described left a credit bal- [fol. 127] ance of $5,040,454.31 in the account Section Etrangere Ministere des Finances on July 13, 1917, and few payments were thereafter made out of the account up to the date of the Soviet Revolution of November 7, 1917. It is my understanding that after such date Guaranty Trust Company refused to permit withdrawals from the account. The following notation appears on the face of the account under date of November 10, 1917:

"Notice: Allow no withdrawals. Refer to Mr. Conway or see Mr. Putnam."

2. After the Soviet Revolution, Guaranty Trust Company of New York ascertained by newspaper reports and in other

ways that the Soviet Government had taken over the various Russian banks with which Guaranty Trust Company had accounts and had repudiated the public debt. On February 15, 1918, Guaranty Trust Company cabled to its representative in Petrograd, Harvey C. Emery, to ascertain the facts in this regard, and on February 23, 1918, received cablegrams from Mr. Emery stating that all Russian commercial banks had ceased to exist, having been absorbed into the State Bank; that the shares of the Russian commercial banks had been declared null and void; that a decree nationalizing the said banks had been enacted by the Soviet Government on December 27, 1917, a decree repudiating the loans of the Russian Government on February 3, 1918, and a decree annulling the share capital of said banks on February 3, 1918; and that there was no hope of payment of the accounts of Guaranty Trust Company of New York with the various Russian banks.

[fol. 128] On the basis of this and other information, Guaranty Trust Company determined, and was advised by counsel, that the Russian Government which had de facto succeeded to the Provisional Russian Government had taken over all the Russian commercial banks; that these banks had been absorbed by it into the State Bank; and that the Russian Government through the State Bank had succeeded to the assets and liabilities of the commercial banks, including liabilities upon the credit balances of Guaranty Trust Company in such banks. The counsel of Guaranty Trust Company, with whom I personally consulted and conferred in this connection, was Mr. Charles H. Russell, now deceased, a partner in the firm of Stetson Jennings & Russell (now Davis Polk Wardwell Gardiner & Reed).

3. In consequence of this situation and upon the advice of Mr. Russell, the Russian accounts of Guaranty Trust Company under my supervision were on or about February 25, 1918, consolidated into a single account entitled "Russian Government account" to the end and for the purpose of availing of the Section Etrangere Ministere des Finances account to pay Guaranty Trust Company's claim against the Russian Government for the dollar value of its ruble balances with the former Russian private banks. As part of this transaction the above-described account Section Etrangere Ministere des Finances was closed by entering

on the debit side thereof on February 25, 1918, the exact balance appearing on the credit side and by entering a cipher under the caption "balance." These closing entries in the account as made under my supervision and as still [fol. 129] standing on the books of Guaranty Trust Company are the following:

"Date	Debits	Credits	Balance
1918		.....	5,001,849.79
Feb. 25	5,001,849.79		0"

The said Russian Government account, created on February 25, 1918, under my direction and supervision as a consolidation of the above-described Russian accounts, comprised on the credit side all the dollar balances formerly standing with Guaranty Trust Company to the credit of the account Section Etrangere Ministere des Finances and the various Russian commercial banks, and on the debit side the ruble balances owed to Guaranty Trust Company by its various Russian banking correspondents together with the dollar valuations at which these balances appeared on the books of Guaranty Trust Company. The total amount owed by the Russian Government to Guaranty Trust Company according to said Russian Government account as of February 25, 1918, was more than $9,000,000, while the total owed by Guaranty Trust Company to the Russian Government according to said account as of such date was $7,226,000 approximately. Subsequently additions were made to said Russian Government account on both sides of the ledger without substantially affecting the balance of the account, which continued to be in favor of Guaranty Trust Company and against the Russian Government.

4. On March 14, 1918, the closing of the account Section Etrangere Ministere des Finances and the creation of the [fol. 130] consolidated account above-described were approved by the Executive Committee of the Board of Directors of Guaranty Trust Company. At the meeting of said Committee on that date, the following proceedings were had according to the minutes:

"The President having made a report to the Committee in regard to financial conditions in Russia, the reported absorption of the commercial banks by the government, the discontinuance of the existence of such banks and the con-

fiscation of their share capitals, and the repudiation of government loans, and that the officers of the Trust Company, in view of existing conditions and under advice of counsel, had consolidated the accounts of the Russian commercial banks in Russia and of the Russian government into one account under the title 'Russian Government Account,' it was on motion, duly seconded,

Resolved that the action of the officers of the Company in consolidating the accounts of the Russian commercial banks in Russia and of the Russian Government, as reported by the President, is approved, ratified and confirmed."

The President of Guaranty Trust Company mentioned in these minutes was Mr. Charles H. Sabin. Mr. Sabin died on October 10, 1933.

5. Exhibit 21 attached hereto is a true photostatic copy of an original letter in the files of Guaranty Trust Com-
[fol. 131] pany over the signature of Charles E. Hughes, Secretary of State, dated December 2, 1921. The Mr. Powell mentioned in the pencil note at the upper left hand corner of such letter is and was in 1921 one of the Assistant Comptrollers of Guaranty Trust Company acting under my supervision, and the pencil note at the foot of such letter reading

"Minister of Finance Imperial Russian Gov. $5,001,849.49 merged with Russian Gov. a/c"

is in his handwriting. Exhibit 22 attached hereto is a true photostatic copy of a carbon copy of letter in the files of Guaranty Trust Company addressed by the Chairman of the Board of Guaranty Trust Company to Hon. Charles E. Hughes, Secretary of State, on December 9, 1921. The initials C. H. S. on the second page of such letter are in the handwriting of Mr. Charles H. Sabin, who ceased to be President and became Chairman of the Board of Guaranty Trust Company on October 5, 1921. Exhibit 23 attached hereto is a true photostatic copy of an original letter in the files of Guaranty Trust Company over the signature of Charles E. Hughes, Secretary of State, dated January 17, 1922.

Stuart H. Patterson.

Sworn to before me this 17th day of October, 1935.
Harry Rode, Notary Public, Queens County.

[fol. 132] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF WILLIAM C. CANNON

STATE OF NEW YORK,
County of New York, ss:

William C. Cannon, being duly sworn, says:

I am an attorney and counselor at law and member of the firm of Davis Polk Wardwell Gardiner & Reed, formerly Stetson Jennings & Russell, with which I have been associated since 1906. I was well acquainted with Mr. Charles H. Russell, who was a member of that firm and its predecessors from 1880 on and who died on February 19, 1921.

1. Mr. Russell advised Mr. Charles H. Sabin, President of Guaranty Trust Company of New York, and Mr. Stuart H. Patterson, Comptroller of that Company, in 1918 and 1919 with reference to the problems created by the Soviet Government's nationalization of the Russian private banks. I was informed by Mr. Russell and was generally familiar [fol. 133] with the fact that he was considering this problem and advising Guaranty Trust Company thereon.

2. In the correspondence files of my firm containing correspondence relative to the Russian matters of Guaranty Trust Company of New York appears a letter from Coudert Brothers, counselors at law, addressed to Mr. Russell under date of June 17, 1919. A photostatic copy of this letter is attached marked Exhibit 10. In the same files appears another letter addressed by the same firm to Mr. Russell under date of June 18, 1919, of which a photostatic copy is attached marked Exhibit 11. The words "Russian Government" written at the head of this letter in pencil are in Mr. Russell's handwriting.

In the same files under date of June 19, 1919, appears a carbon copy of a letter of acknowledgment of the enclosures referred to in Exhibit 11, addressed to Coudert Brothers, for the attention of Mr. Murray. Immediately following this acknowledgment in the same files of my firm appears a typewritten memorandum by C. H. R. (Mr. Russell) of conversation held on June 26, 1919, with Mr. Murray of Coudert Brothers, the memorandum being entitled "Russian Government Deposit." A photostatic copy

of this memorandum is attached hereto marked Exhibit 12. The ink interlineation "of Coudert Brothers" is in the handwriting of Mr. Russell.

The next paper in the same files of my firm is a carbon copy of letter from Mr. Russell to Coudert Brothers dated July 1, 1919, returning the papers enclosed with their letter [fol. 134] of June 18th. A photostatic copy of this carbon is hereto attached marked Exhibit 13. The caption "Russian Government" and the initials "C. H. R." written thereon are in the handwriting of Mr. Russell.

The next paper in the said files is a copy of the letter from S. Ughet, Charge d'Affaires ad Interim of Russia, dated July 1, 1919, to John H. Fulton, Esq., Chairman of the Protective Committee for the 6½% $50,000,000 Credit, of which a copy was marked Defendant's Exhibit 1 for Identification on the deposition herein of Serge Ughet. The next following paper in the said files of my firm is a copy of letter from J. H. Fulton to Guaranty Trust Company dated July 3, 1919, of which a copy is attached hereto marked Exhibit 14. The next following paper in the said file is a copy of letter subscribed by "President" to J. H. Fulton, Chairman of the Protective Committee for the 6½% $50,000,000 Russian Credit, and dated July 10, 1919, of which a copy was marked on the deposition of Mr. Serge Ughet herein Defendant's Exhibit 3 for Identification. The next following paper is a letter from Guaranty Trust Company to Mr. Russell dated July 11, 1919, with which the three copies of letters last above mentioned were evidently enclosed and of which a photostatic copy is hereto annexed marked Exhibit 15. The words "Russian Government" on said letter are in Mr. Russell's handwriting.

3. I was not present at the conference of June 26, 1919, between Mr. Russell and Mr. Murray, described in Exhibit [fol. 135] 12. I understand that the said Mr. Murray died two or three years ago.

William C. Cannon.

Sworn to before me this 17th day of October, 1935.
Wm. H. Bruder, Notary Public, Bronx County
No. 122.

[fol. 136] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF SAMUEL W. REYBURN

STATE OF NEW YORK,
County of New York, ss.:

Samuel W. Reyburn, being duly sworn, says:

I am engaged in business in the City of New York as President of the Associated Dry Goods Corporation of New York, and have my office and place of business at 366 Fifth Avenue.

In 1894 I was graduated from Arkansas University Law School and was admitted to practice law in Arkansas State and Federal Courts, and followed that profession for several years.

In 1899 I acquired an interest in a real estate and mortgage loan brokerage business, and with that as a foundation, proceeded as the chief executive to build up a general banking and trust company business, of which I was the directing head until 1914, when I moved to New York.

[fol. 137] In and about the year 1923, I was a director of the Guaranty Trust Company of New York, and in the Spring of that year, acted as a member of the Board of Directors which examined the Bank as of March 2, 1923, in compliance with the provisions of the State Banking Law. As I attended practically all the meetings of the Committee, I became familiar with its important problems, and then first became acquainted with the details of its Russian accounts hereinafter described.

I was selected as a member of the Examining Committee for the year of 1924, and acted as Chairman in the examination as of March 7, 1924. This Committee consisted of Mr. E. R. Stettinius (now deceased), and Mr. Eugene G. Grace, as well as myself. Its report to the President of the Guaranty Trust Company was made under date of April 25, 1924.

With my experience as a lawyer and as the chief executive of a bank through so many years, and the experience on this Examining Committee the previous year, I exerted every effort to make the examination a most thorough and searching one. All of the more important accounts were discussed at length and in detail with the respective officers

directly in charge of the handling of such accounts. Among the accounts which I examined were the socalled Russian accounts of Guaranty Trust Company of New York, consisting of dollar balances formerly owed by the Trust Company to the Russian Government and to various Russian banks, and of the Trust Company's memorandum accounts reflecting ruble deposits in Russia owed to it by various Russian banks.

[fol. 138] The books of the Trust Company showed that these said former dollar accounts had been closed and set off against the dollar value of the ruble accounts owed to the Guaranty Trust Company so as to leave on the net balance a considerable sum owed to the Guaranty Trust Company by the Russian Government.

I examined Mr. Charles H. Sabin, then Chairman of the Board of the Guaranty Trust Company, at length about this account, the offset and the component parts. One of the component parts was a balance of approximately $5,000,000 which had stood with the Guaranty Trust Company in 1917 to the credit of the Russian Government Ministry of Finance. Mr. Sabin explained that when the de facto Russian Government asserted ownership of the banks in that country and took over their assets, it refused to honor the obligations due the Guaranty Trust Company, and he, as President of the latter Company, in its name informed the representatives of the Russian Government in this country that the Trust Company would not pay the balance due to the Russian Government, and consolidated the debit and credit balances so that that account would offset moneys due the Guaranty Trust Company which the Russian Government had refused to pay.

At this late date I cannot remember dates and names and actual questions and answers that passed between Mr. Sabin and myself in 1924 with respect to the Russian account, but I am confident that I was very thorough in this matter and that he gave me every assurance that was necessary to indicate the statute of limitations had begun to run on this transaction. As a lawyer, and for fifteen years the chief executive of a bank, I knew that with regard to [fol. 139] a deposit in a bank, the statute could not begin to run until the bank refused payment.

During the Committee's work on examining the bank, Mr. Stettinius had to leave for his health. On his return, the report I had prepared was submitted to him, and I took a

large part of two days in helping him make a very careful review of all the Committee's work in making the examination. Literally he went through this report word for word, and suggested a great many acceptable changes. He was entirely satisfied with the explanation I gave and joined me in signing the report.

With respect to the Russian accounts above described this report as prepared by me and as signed by the Committee contained the following language:

"The status of the Russian accounts improves on account of the statute of limitations with the lapse of time."

I am sure that I would not have employed this language in the report unless I had received information from Mr. Sabin that the statute of limitations with respect to the $5,000,000 Russian Government account had already begun to run by virtue of a refusal of payment communicated by Guaranty Trust Company to the Russian Government.

Samuel W. Reyburn.

Sworn to before me this 25th day of September, 1935.
John McDonnell, Notary Public, Queens County
No. 2649.

[fol. 140] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE B. LINK

STATE OF NEW YORK,
County of New York, ss:

George B. Link, being duly sworn, says:

I am and have been since May 1917 in the employ of The National City Bank of New York, a corporation under the National Banking Law, with its principal office and place of business at No. 55 Wall Street, New York, N. Y., and am in charge of the Russian division of that bank.

The original letter from Charles H. Sabin as President of Guaranty Trust Company to J. H. Fulton as Chairman of the Protective Committee for the 6½% $50,000,000 Russian Credit, dated July 10, 1919, of which a photostatic copy is hereto attached as Exhibit 3A, and the original letters from Serge Ughet as Charge d'Affaires ad Interim of Russia to

National City Bank of New York and others dated June 16 and July 8, 1919, of which photostatic copies are hereto at-
[fol. 141] tached marked Exhibits 16 and 16A respectively, are in the files of National City Bank, and said exhibits are true copies thereof. On the date of said letters John H. Fulton, was a Vice-President of National City Bank of New York. I am informed that he died on or about September 25, 1927.

I have carefully examined the files of National City Bank of New York and caused a search thereof to be made for the original letter from S. Ughet, Charge d'Affaires ad Interim of Russia, to John H. Fulton as Chairman, etc., dated July 1, 1919, of which a copy is attached hereto marked Defendant's Exhibit 1 for Identification, and also for initialed carbon copies of the letter from J. H. Fulton as Chairman, etc., to Guaranty Trust Company dated July 3, 1919, of which a copy is attached hereto marked Exhibit 14, and of letter from J. H. Fulton as Chairman to S. Ughet, Charge d'Affaires ad Interim of Russia dated July 11, 1919, of which a copy is attached hereto marked Defendant's Exhibit 2 for Identification. I have not been able to find in said files the original letter or the initialed carbon copies described, although said files do contain in correct chronological order corresponding to the dates on the said respective exhibits correct copies thereof. It is the custom of the National City Bank of New York from time to time to destroy old and obsolete papers and files having to do with transactions believed to be closed.

The contract under which the $50,000,000 Credit was extended to the Russian Government by the banking syndicate as described in Defendant's Exhibit 1 for Identification provided that interest and principal on the said credit should be
[fol. 142] payable by The National City Bank of the City of New York out of funds provided for that purpose by the Russian Government. Guaranty Trust Company of New York was a member of said banking syndicate. Interest on the credit fell due quarterly on January 10th, April 10th, July 10th and October 10th of each year, the last interest instalment falling due July 10, 1919. The credit matured on June 18, 1919.

George B. Link.

Sworn to before me this 18th day of October, 1935.
Philip D. Ferrall, Notary Public, Kings County.

[fol. 143] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE J. KENNY

STATE OF NEW YORK,
County of New York, ss:

George J. Kenny, being duly sworn, says:

I am Secretary of the Certificate Holders' Protective Committee for the Imperial Russian Government $50,000,000 6½% Three-Year Credit due June 18, 1919, and now in default, and in my said capacity have custody of the minutes of the Committee.

The attached seven photostatic pages marked Exhibit 18 are a correct copy of the original minutes of a meeting of the said Committee held on July 2, 1919, in my custody as aforesaid. The attached photostatic page marked Exhibit 19 is a correct copy of the original minutes of a meeting of the said Committee held on July 8, 1919, in my custody as aforesaid. The attached four photostatic pages marked Exhibit 20 are a correct copy of the original minutes of a meeting of the said Committee held July 11, 1919, in my custody as aforesaid.

[fol. 144] I have examined the files of the said Committee in my custody for the original letter from S. Ughet as Charge d'Affaires ad Interim of Russia to J. H. Fulton as Chairman of the said Committee dated July 1, 1919, and for carbon file copies of the letter from J. H. Fulton as Chairman to Guaranty Trust Company dated July 3, 1919, and the letter from J. H. Fulton to S. Ughet as Charge d'Affaires ad Interim dated July 11, 1919 (of all of which copies are set forth in the said minutes Exhibits 18, 19 and 20), but the said original letter and the said carbon copies do not appear in the files or records of the Committee.

George J. Kenny.

Sworn to before me this 10th day of October, 1935. Marc A. Rieffel, Notary Public. N. Y. Co. Clerk's No. 91, Register's No. 7-R-245. Term expires March 30, 1937. (Seal.)

[fol. 145] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF RODNEY DEAN

STATE OF NEW YORK,
County of New York, ss:

Rodney Dean, being duly sworn, says:

I am employed by the American Iron & Steel Institute, 350 Fifth Avenue, New York, N. Y. At the time of the formation of a Protective Committee for the $50,000,000 6½% Three Year Credit of the Imperial Russian Government due June 18, 1919, which was formed on or about July 1, 1919, I was appointed Secretary of that Committee and continued to act as such Secretary until about August 1921. During such period I was personally acquainted with Mr. Serge Ughet, Financial Attache to the Russian Embassy in the United States, and was familiar with his signature, of which a facsimile appears on Exhibit 16 attached hereto.

The attached photostats marked Exhibits 18, 19 and 20 are true copies of the minutes of meetings of said Protective Committee held on July 2, July 8 and July 11, 1919, [fol. 146] respectively, prepared and signed by me as Secretary, and the said exhibits bear facsimiles of my signature. After reading Exhibits 18, 19 and 20 and attempting thereby to refresh my recollection as to the facts stated therein, I find that I have no present recollection of any of those facts, either independently of the said exhibits or from present memory as refreshed thereby (except as hereinafter stated). The said respective minutes were, however, signed by me on or about the dates thereof respectively in the course of my duties as Secretary of the said Protective Committee, and I am confident that, when I signed these minutes, I knew that they contained correct statements of what occurred at the respective meetings. I fully believe and have no doubt that the facts stated to have occurred at the respective meetings are correctly stated. My reason for the two foregoing statements is that otherwise I would not have signed the original minutes of which Exhibits 18, 19 and 20 are photostatic copies.

To the best of my recollection the letter dated July 1, 1919, and set forth in Exhibit 18 and the letter dated July

10, 1919, and set forth in Exhibit 20, were original, signed letters. To the best of my recollection the letter dated June 9, 1919, and set forth in Exhibit 20 was not enclosed (either in copy or in original) with the letter dated July 11, 1919, to Mr. Ughet and set forth in Exhibit 20. My memory with regard to the letter dated July 11, 1919, has been refreshed by examination of a copy thereof attached hereto as Defendant's Exhibit 2 for Identification and bearing at the [fol. 147] lower left hand corner my initials which show that I prepared such letter for the signature of John H. Fulton.

Rodney Dean.

Sworn to before me this 15th day of October, 1935.
Sylvia A. Shaughnessy, Notary Public, Queens County.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ARTHUR B. HATCHER

STATE OF NEW YORK,
County of New York, ss:

Arthur B. Hatcher, being duly sworn, says:

[fol. 148] I am a Second Vice-President of Guaranty Trust Company of New York, and from 1907 to 1916 was secretary to Charles H. Sabin, then President of that Company. I am familiar with his signature from having seen him sign his name. The attached photostatic copy of letter marked Exhibit 3A to Mr. J. H. Fulton, Chairman of the Protective Committee for the 6½% $50,000,000 Russian Credit, etc., dated July 10, 1919, on the letterhead of Guaranty Trust Company of New York, which photostatic copy I have examined, bears a facsimile of the signature of the said Charles H. Sabin.

Arthur B. Hatcher.

Sworn to before me this 25th day of September, 1935.
W. H. Potter, Notary Public, Nassau Co. No. 1047.

[fol. 149] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF C. A. McKEON

STATE OF NEW YORK,
County of New York, ss:

C. A. McKeon, being duly sworn, says:

I am and have been since 1917 an employe of Guaranty Trust Company of New York in its Foreign Department. In that capacity I have had for a number of years a general familiarity with the files of Guaranty Trust Company relating to its foreign business, and have frequently made investigations in its archives for documents relating to the accounts of former Russian depositors. On several occasions within the last two years I and certain other employes of Guaranty Trust Company have made a thorough search in its archives, records and files for the original letter from J. H. Fulton as Chairman of a Protective Committee to Guaranty Trust Company dated July 3, 1919, of which a copy is attached hereto marked Exhibit 14; for the identical copy of letter from Serge Ughet as Charge d'Affaires ad Interim of Russia to the said Fulton dated July 1, 1919, [fol. 150] which is described in Exhibit 14 and of which a copy is attached hereto marked Defendant's Exhibit 1 for Identification; for the carbon file copy of a letter from Charles H. Sabin as President of Guaranty Trust Company to the said Fulton, dated July 10, 1919, of which a copy is attached hereto marked Defendant's Exhibit 3 for Identification; and for the carbon file copy of a letter from said Mr. Sabin to the said Ughet as Russian Financial Attache dated December 12, 1917, of which a copy is attached hereto marked Defendant's Exhibit 6 for Identification. We have not been able to find the said papers in said archives, records or files, although the files of Guaranty Trust Company do contain copies of the said papers.

I have personally made a thorough search of the archives, records and files of Guaranty Trust Company for the original incoming cablegram from Sahmen, Director of the Credit Chancery at Petrograd, to Guaranty Trust Company under date of January 23, 1917, of which a copy is attached hereto marked Exhibit 17, but have not been able to find the said cablegram.

In the last eighteen years the archives of Guaranty Trust Company have been moved three or four times and it is my belief that the papers above described were lost or mislaid in the course of one of such removals.

Chas. A. McKeon.

Sworn to before me this 16th day of October, 1935. H. A. Meinken, Notary Public, Nassau County No. 2048.

[fol. 151] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ARTHUR J. CAREY

STATE OF NEW YORK,
County of New York, ss:

Arthur J. Carey, being duly sworn, says:

I am and have been since September 17, 1916, continuously an employe of Guaranty Trust Company of New York in the Cable Department.

My duties in the Cable Department in January 1917 included receiving and copying out for the records of Guaranty Trust Company incoming cablegrams. Practically all cablegrams received from Europe at that time were in open language. It was my duty to receive the cablegram from the cable or telegraph company messenger, open it, and copy it in triplicate on the typewriter. The first copy was bound in a cable book, in chronological order with other cablegrams, segregated according to the country of origin. The second copy was marked by me for the attention of the particular department of Guaranty Trust Company which [fol. 152] it concerned. The third copy was sent in the mail to the sender of the cablegram as a confirmation of the message received. After copying out the original cablegram in this fashion and routing the various copies for disposition in the manner described, I would place the original cablegram in a basket on my desk for the files.

The foregoing was the usual and regular course of business in the handling of incoming cablegrams in the Cable Department of Guaranty Trust Company according to my knowledge as an employe engaged therein.

I identify the attached photostat of cablegram dated January 23, 1917, and marked Exhibit 17 as a correct copy of a copy of cablegram made by me on or about that date and now contained in a bound volume of incoming cablegrams in the archives of Guaranty Trust Company of New York. I am able to identify the cablegram by my initials A. J. C. typed thereon, which mean that I personally made the transcript from the original cablegram in the manner described and that the paper of which Exhibit 17 is a photostatic copy was typewritten by me and earmarked for binding for Guaranty Trust Company's archives in the manner above described.

Arthur J. Carey.

Sworn to before me this 9th day of October, 1935. H. A. Meinken, Notary Public, Nassau County No. 2048.

[fol. 153] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GRAYSON M.-P. MURPHY

STATE OF NEW YORK,
County of New York, ss:

Grayson M.-P. Murphy, being duly sworn, says:

I have read the affidavit of J. Paul Huber verified December 14, 1934 on the above named defendant's motion to take the testimony of Boris Bakhmetev and Serge Ughet by deposition on defendant's behalf.

During the period mentioned by Mr. Huber as that in which certain conversations were held between the late Mr. Charles H. Sabin, then president of the defendant, and Mr. Bakhmetev or Mr. Ughet, namely between February 1918 and 1922 or 1923 I was a director of the defendant and was well acquainted with Mr. Ughet and knew him to be diplomatic representative of the State of Russia in this country. I recall that some years ago Mr. Ughet said to me that he [fol. 154] had been informed by Guaranty Trust Company of New York that it refused to pay the former Russian Government account with the defendant. I do not remem-

ber having participated in any conversation on the subject between Mr. Sabin and Mr. Ughet.

Grayson M.-P. Murphy.

Sworn to before me this 25th day of February, 1935.
Samuel E. Gruman, Notary Public, Kings County.

[fol. 155] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF EUGENE W. STETSON

STATE OF NEW YORK,
County of New York, ss:

Eugene W. Stetson, being duly sworn, says:

I am a vice president of Guaranty Trust Company of New York, and have read the affidavit of J. Paul Huber verified December 14, 1934 upon said defendant's motion to take the testimony of Boris Bakhmetev and Serge Ughet by deposition on behalf of defendant.

During part of the period mentioned by Mr. Huber as the time in which he believes that the late Mr. Charles H. Sabin, then president of the defendant, informed Mr. Bakhmetev or Mr. Ughet that the defendant recognized no credit balance as payable to the State of Russia and would not honor a demand, namely from 1917 to the autumn of 1921, I was [fol. 156] a member of the managing committee of the defendant. The managing committee was a small group of the senior executives who supervised the business of the bank. As such member of the managing committee, I recall that I was informed about the time mentioned by Mr. Huber that the defendant had informed representatives of the Russian Government that it would not pay the account formerly standing with the defendant in the name of the Russian Government Ministry of Finance. I do not definitely recall from whom I received this information, but believe it was from Mr. Sabin. I was not personally present

at any conversations between Mr. Sabin and Mr. Ughet or Mr. Bakhmetev on the subject, so far as I can remember.

Eugene W. Stetson.

Sworn to before me this 25th day of February, 1935. Frank A. Winterbottom, Notary Public Kings County.

[fol. 157] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF CONRAD DE SAHMEN

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA,
French Republic,
City of Paris, ss:

Conrad de Sahmen, being duly sworn, deposes and says:

I reside in the city of Paris and have my office there at 37, Boulevard Malesherbes. I was formerly Director of the Chancellery of Credit of the Imperial Russian Ministry of Finance.

Early in 1936 I was asked by the United States Government to prepare answers to the following questions with respect to the former Ministry of Finance account with the Guaranty Trust Company of New New York and I, therefore, prepared my answers as follows to the said questions respectively, which answers are true to the best of my recollection and belief:

Question. For what period or periods were you associated with the Chancellery of Credit of Russian Ministry of
[fol. 158] Finance, Section Etrangère?

Answer. I was associated with the Chancellerie de Crédit, of which the "Section Etrangère" was a part—since 1896 when I entered the Civil Service. Having started as a junior clerc, I was gradually promoted to higher ranks, Vice-Director in January 1913 and Director in December 1916.

During the Great War I was delegated several times to represent the Russian Ministry of Finance abroad, the result of which was my temporary absence from Petrograd.

The periods of my absence were the following: January-February 1915, August 1915 to end of May old style (early June new style) 1916 and a fortnight later again, from end of June to July 1916.

From the end of July to the 11th November when I retired from the Civil Service I resided in Petrograd without interruption.

I see a misprint in my first affidavit in this case where it has been stated that I was acting de facto as Director of the Chancellerie since June (actually July) 1916.

(2) Question. Give a detailed statement of your duties in any such association?

Answer—Since the first days of my association with the Chancellerie de Crédit I had to deal with the foreign business of the Russian Ministry of Finance. I did not belong [fol. 159] to the "Section Etrangère" but was committed to audit the accountancy of the Section Etrangère, as far as I remember, since about 1905.

Since I was promoted to the Vice-Directorship of the Chancellerie de Crédit the Section Etrangère was under my direct orders.

(3) Question. State the terms, if you know, under which the Chancellery of Credit in July 1916 opened a deposit account with the Guaranty Trust Company of New York?

Answer. I cannot remember any special conditions made for the deposit account opened in 1916 with the Guaranty Trust Company. The conditions were the same as for all other similar accounts.

(4) Question. Exactly how were withdrawals made from this account with the Guaranty Trust Company of New York?

Answer. Withdrawals were made from all accounts either by cable or by letter. During the War this former way of disposal was normal. The cables were signed "Finetrange" no official being mentioned as signatory. A copy bearing the signature of the Chef (Director) de Section or his assistant was kept in the files of the Section Etrangère.

As regards the bank receiving the cable, the authenticity of same was checked by conventional reference numbers. Cables were being confirmed by letters.

[fol. 160] Letters had to bear two signatures. A list of officials entitled to sign on behalf of the Chancellerie (four or five in number) was sent from time to time to all banks concerned.

(5) Question. Did persons other than yourself have the authority to draw against this deposit account?

Answer. My statement referring to question 4 answers this question as well.

(6) Question. Did Mr. Boris Bakhmeteff, as Russian Ambassador, have the right to draw against this deposit account, and if so, under what conditions?

Answer. Mr. Boris Bakhmeteff was vested with extraordinary powers. He was the only Ambassador who held authority to dispose at his discretion of all accounts of the Russian Ministry of Finance (including those of the Section Etrangère). There were no conditions to this power. He held the same rights as the Minister of Finance.

(7) Question. To whom were statements and vouchers with respect to the condition of the account sent?

Answer. Statements and vouchers with respect to the accounts of the Section Etrangère were sent to this latter.

(8) Question. By whom were the last withdrawals from this deposit account made?

[fol. 161] Answer. As long as I was connected with the Chancellerie de Crédit only the Section Etrangère itself disposed of the account.

(9) Question. Do you know whether any demand was ever made on the Guaranty Trust Company of New York subsequent to December 12, 1917 for the payment of the sum of $4,976,722.78 or any part thereof, either by the Russian Embassy in this country, or anyone claiming an interest in said deposit account? State fully what you know in this connection?

Answer. I have no direct knowledge with regard to what happened after November 1917. I have only heard that a demand has been made on the Guaranty Trust Company by the Ambassador Mr. Boris Bakhmeteff consequent to arrangements he had made with the United States Treasury with regard*ing* to winding up of Russian contracts for war supplies.

After preparing the above answers I took them to the United States Consulate General in the city of Paris, where an affidavit was drawn up for my signature, containing substantially the questions and answers as above stated. I thereupon signed and sworn to this affidavit and handed it to an Officer in the American Consulate General. I did not retain a copy of this affidavit.

With respect to my answer to the seventh question above, I have no definite recollection as to whether statements and vouchers regarding the particular Ministry of Finance account with the Guaranty Trust were sent to Petrograd. As a general rule such statements and vouchers covering ac- [fol. 162] counts abroad of the Ministry of Finance were sent to Petrograd.

With respect to my answer to the ninth question, the knowledge therein stated was obtained by me in the course of conversations with Mr. Boris Bakhmeteff and Mr. Serge Ughet in and after 1919. I met Mr. Boris Bakhmeteff on numerous occasions when he came to Paris for the Peace Conference early in 1919. Mr. Bakhmeteff and Mr. Ughet, in the course of their conversations with me, in and about 1919, said in substance that the Russian Embassy in the United States had demanded payment of the Ministry of Finance account with the Guaranty Trust Company of New York, and that the Guaranty Trust Company had refused to pay.

In connection with the Peace Conference during 1919, Mr. Boris Bakhmeteff and I worked together on financial question- affecting the former Russian Imperial and Provisional Governments.

Conrad de Sahmen. C. Sahmen.

Sworn to before me, this fourteenth day of September 1936. John R. Wood, Vice-Consul of the United States of America at Paris, France. (Seal of American Consulate General.)

American Consulate General, $2.00 Fee Stamp, Sep. 14, 1936, Frs. 3100, 13773, Paris, France.

[fol. 163] DEFENDANT'S EXHIBIT 1

July 1, 1919.

John H. Fulton, Esq., Chairman of the Protective Committee, for the 6½% $50,000,000 Credit, The National City Bank of New York, 55 Wall Street, New York City.

DEAR SIR:

From the last reports from Paris of the Associated Press, the financial circles in New York have certainly

already learned the fact that the obligation of meeting the liabilities of the Russian National debt is one of the fundamental principles for the recognition by the Allied and Associated Powers of the Russian Government in Omsk, which obligations, besides the declaration of Admiral Kolchak of November 27th, 1918, has again been confirmed by Admiral Kolchak to the Peace Conference in Paris.

The last payment of the interest on this $50,000,000 6½% Credit becomes due July 10th involving the amount of $1,625,000.

The Protective Committee formed by the banking institutions participating in the Syndicate of Banks is cognizant of the fact that after the Bolshevik uprising in 1917 and contrary to the repudiation at that time of the foreign debts by the Bolsheviks, the Russian Embassy considered it its moral duty, in accordance with the traditions of National Russia to meet faithfully all her financial obligations, to [fol. 164] pay regularly the interest and the commission to the National City Bank as same became due. Out of the general funds at the disposal of the Russian Embassy with the National City Bank on this operation alone, the interest and the commission were paid on January 10th, April 10th, July 10th and October 10th, 1918, and on January 10th, April 10th, 1919, besides regular payments of interest on all other financial obligations of Russia in the United States.

Unfortunately, the Russian Embassy is now not in a position to meet the interest due July 10th out of its funds with the National City Bank owing to lack of same.

The Protective Committee is possibly aware that the Ministry of Finance of the Provisional Government of Russia had with the Guaranty Trust Company an account, the actual credit balance of which is approximately $5,000,000.

I beg to state that this account, as far as I can ascertain, was opened first with $25,000,000, being 50% of the proceeds of the above mentioned $50,000,000 operation. Later on other sums were credited to this account, but the main bulk of the funds constitutes the proceeds of the operation on which the interest becomes due July 10th.

The Russian Ministry of Finance, in establishing the banking credit with the Syndicate, had evidently no intention to issue for this specific operation bonds on behalf of the Russian Government on the open market, but the Min-

istry of Finance possibly understood at that time that the banking institutions, signatories to this agreement, would offer on their own behalf the participation in said operation to the American public.

[fol. 165] The form of the bonds, in which this participation has been offered to the open market by the Syndicate of the Banks, and upon which is printed in large character- "Imperial Russian Government" possibly led to the impression that these bonds represent a direct issue of the Russian Government. At least, in the financial sections of the New York papers the quotation of these bonds has always been given as "6½% Imperial Russian Government Bonds".

In my opinion, had this credit operation been limited to the above banking institutions alone, or, if the bonds had been issued in other form, the question of making an agreement with the Syndicate of the Banks relative to extending the credit and postponement of the payment of the interest would possibly have been facilitated as the interests of the open market would not have been involved and no publicity given to the failure of Russia to meet, for the first time, her financial obligations in the United States. My opinion on this question seems further strengthened by the fact that the next payment of interest by the Russian Government on their direct financial operations on the open market is not due until December 1, 1919, thus affording the Russian Government in Omsk sufficient time to make necessary financial arrangements.

I now venture to address the Protective Committee with the view of protecting the Russian National Credit in the United States, with the request to help us to meet the situation, and I beg the Syndicate of the Banks to do its utmost to pay the interest due on the bonds issued by the Syndicate on their own behalf.

[fol. 166] I believe that I am morally justified in making such a request and I am prepared to do everything in my power to assist the Syndicate of the Banks to meet the interest on their financial obligations, protecting thereby the Russian Credit in the United States, as well as the interests of the American holders of obligations issued by the Banks.

In view of the above, I have the honor to submit for the kind consideration of the Protective Committee the following proposal:

The Syndicate of the Banks to issue a request to the Guaranty Trust Company, holder of the funds of the Russian Ministry of Finance, to release and transfer $1,625,000 to the account of the National City Bank, as the representative of the said Syndicate, in order to meet the payment of the interest due by the Russian Ministry of Finance to the Syndicate. Such release of the funds should be made by the Guaranty Trust Company under joint guarantee of the banking institutions participating in the $50,000,000 Credit. On the other hand, the Syndicate of the Banks, so as to protect their own interests, to approach the United States Government with the request that it be confirmed to them that, in accordance with the actual policy of the Allied and Associated Powers, and particularly of the United States, it is not to be expected that formal recognition will be extended to any Russian Government which would not undertake to settle the Russian National debt.

The funds provided in such a way will enable the Syndicate of the Banks to meet their own obligations to the American holders and indirectly protect the Russian credit in the United States.

[fol. 167] I should be extremely obliged if the Protective Committee would let me know as promptly as possible if such a proposal meets their views and if the Committee is prepared to submit this suggestion to the Syndicate of the Banks.

I am, Dear Sir,

Very truly yours, (Signed) S. Ughet, Charge d'Affaires ad Interim of Russia.

DEFENDANT'S EXHIBIT 2

July 11, 1919.

Copied from "Trust Dept. Files—Corporate—Imperial Russian Government 6½s".

S. Ughet, Esq., Charge d'Affaires ad Interim of Russia, Russian Embassy, Washington, D. C.

DEAR SIR:

Replying to your letter of July 1, the Committee transmitted a copy of your letter to the Guaranty Trust Com-

pany inquiring if the Guaranty Trust Company were willing to release the sum of $1,625,000. to meet interest due July 10. The Committee has today received a reply from [fol. 168] Mr. Sabin, President of the Guaranty Trust Company, copy of which I enclose herewith.

With reference to the point which you raise regarding the issuance of Participation Certificates to others than the banks mentioned in the contract, the Committee is informed that in all the negotiations between the representatives of the banks and the Russian Ministry of Finance it was freely discussed and clearly understood that participation in the Credit would be offered to others in America than the banks themselves, and that the banks were simply acting as organizers and managers of an American Syndicate. This is in accordance with the general banking practice in connection with transactions of this magnitude, where the procedure always is for a few banks to organize for managing and distributing the loan among a large number of participants.

All of the above is in accordance with the spirit and content of the contract itself, which in no part contains any restriction as to the number of participants in the Credit.

Yours very truly, J. H. F., Chairman.

RD:ML.
Encl.

[fol. 169] DEFENDANT'S EXHIBIT 3

Copy

Copied from "Trust Dept. Files—Corporate—Imperial Russian Government 6½s".

Guaranty Trust Company of New York

140 Broadway, New York

July 10, 1919.

Mr. J. H. Fulton, Chairman of the Protective Committee for the 6½% $50,000,000. Russian Credit, 55 Wall Street, City of New York.

DEAR MR. FULTON:

In response to your letter of July 3rd enclosing a letter from Mr. Ughet, the Charge d'Affaires ad Interim of Rus-

sia, I wish to state, as I have previously stated, that no one now has authority to draw Russian Funds on deposit in this bank; therefore, we cannot act upon Mr. Ughet's suggestion. In order that your Committee may understand our position in this matter, I attach herewith copy of letter dated June 9th to the Counselor of the State Department at Washington, which I believe fully states our position.

Very truly yours, Charles H. Sabin, President.

1-1.

[fol. 170] DEFENDANT'S EXHIBIT 3A

Photostat of original letter of which Defendant's Exhibit 3 is a copy.

DEFENDANT'S EXHIBIT 4

Copy

Copied from "Trust Dept. Files—Corporate—Imperial Russian Government 6½s".

June 9, 1919.

Hon. Frank L. Polk, Counselor, Department of State, Washington, D. C.

DEAR FRANK:

Upon my return from Southampton this morning, I find your letter of June 4th.

The suggestion that the Russian Government deposit with the Guaranty Trust Company should be used, so far as necessary, to pay the interest falling due on June 18th on one of the Russian loans, was made at a recent conference of bankers here and has already been carefully considered by us.

We hold the deposit for account of "The Russian Government", and shall be under the duty to account for this deposit to a regular and responsible Russian Government whenever such a government is established and calls upon us to pay it or to apply it according to its direction. In the [fol. 171] meantime we can only hold it. We consider that we have no more right or authority to use it now to pay

interest on the bonds of a certain Russian loan than we should have to apply part or all of the deposit of any individual with us to the payment of such individual's debts upon our own initiative. Our action in using part of this deposit for such purpose might be disapproved by a future Russian Government.

If it is important that Russian credit in this country should be maintained or if for any reason whatever it is desirable in the interests of our country that the interest about to become due shall be paid, we stand ready to do our share with other financial institutions in helping to meet the emergency, but not because of any duty arising from the fact that we hold the deposit referred to.

Another Russian loan matures in 1921 and probably a similar question will arise at that time. I understand that there already have been defaults in England and France in the payment of interest on Russian loans; and I do not believe that the bondholders here will be surprised if their interest is not paid on June 18th next.

For these reasons we do not see our way clear to make use of any part of the Russian Government deposit for the purpose mentioned.

As you know, early in 1918 the present Government of Russia at that time and since in power at Petrograd and Moscow and other financial centres, absorbed all the commercial banks in Russia into the State Bank, seized all their assets and all deposits and credits of other institutions and individuals with them, decreed that the commercial banks had ceased to exist, and announced that it would liquidate [fol. 172] their liabilities. At that time we had accounts, including large deposits, in the Russian commercial banks in Russia. Under the circumstances, we considered it necessary and proper to consolidate the Russian Government account and the accounts of the Russian commercial banks, the results being, according to our computation, a credit balance in our favor. This situation, as you will readily understand, gives rise to certain questions which can be satisfactorily settled only upon the restoration or establishment of a responsible government in Russia, when undoubtedly all of them, in so far as they concern American financial interests, will, with the aid of our Government, be properly disposed of. In the meantime, however, as we regard it, both in considering the Russian Government account by itself, and in considering the consolidated account

referred to, any payment made by us now would leave us in a position where we might be required to pay the same amount again.

Very sincerely yours, (Sig.) Charles H. Sabin.

[fol. 173] DEFENDANT'S EXHIBIT 5

November 28, 1917.

DEAR SIRS:

I hereby declare that all moneys now standing at my disposal in various accounts with you and all moneys which may hereafter be deposited with you, subject to my order, are held by me and by my successors in office in trust to be applied for the following general purposes:

Payments on account of orders and contracts heretofore placed by the Russian Supply Committee or other Russian Departments for munitions, machinery; railway, material and equipment, rolling stock, clothing, shoes, leather, provisions and other various supplies for the Russian Army and Navy, also clothing, provisions, agricultural and other commodities for the civilian population of Russia. A list of such orders and contracts is on file in the office of the Financial Attache to the Russian Embassy. The sum alloted for this item amounts to —.

Such moneys shall be placed in a new account or accounts to be opened in my official name or in the name of such official as I shall designate and shall be applied only for the said purposes. Checks on the said account or accounts shall be signed by me in my official capacity or by my duly constituted successor in office in his official capacity or by such official of the Russian Government as I in my official capacity or my successor in office shall designate in writing to sign in his official capacity for the purpose.

[fol. 174] Any check signed as herein provided and so designated shall be deemed to have been drawn for and applied to the foregoing specified purposes so designated and shall constitute full authority to you to make the payment therein directed, and shall be full protection to you against any claim of any individual, cooperation [corporation] or government to the money so paid by you or to any part thereof.

No money so allocated can be taken for other purposes, except that, if, after all obligations have been met or the

liabilities thereunder otherwise terminated, any remaining balance can then be transferred at my free disposal or at the disposal of my duly constituted successor for any purposes of the Russian Government.

I beg to remain,

Yours very truly, —— ——, Ambassador of the Provisional Government of Russia.

The National City Bank of New York, New York City.

[fol. 175] DEFENDANT'S EXHIBIT 6

Copy

Guaranty Trust Company of New York,
140 Broadway, New York

December 12, 1917.

Mr. H. Ughet, Russian Financial Attache, Flatiron Building, New York City.

DEAR SIR:

We beg to refer to a copy of a letter which you have left with us dated November 28, 1917 addressed to The National City Bank of New York by His Excellency the Ambassador of the Provisional Government of Russia, in respect to the disposition of all moneys now standing at his disposal and all moneys which he may hereafter deposit.

There are no moneys deposited with this Company standing at the disposal of His Excellency. Of course, any money which His Excellency may hereafter deposit with us will be subject to his instructions, or those of his duly constituted successor.

We have, however, an account in which there is a balance of $4,976,722.78 standing to the credit of the Ministry of Finance, Section Etrangere. This was opened in July 1916, and moneys in this account may be paid out only upon the [fol. 176] signatures of two of certain designated officials of the Ministry of Finance.

It has been customary for us to honor cable instructions directing payments out of this account, which cable instructions have in each case been confirmed by proper written orders. Under present conditions, we do not see how we

can honor such cable instructions, nor do we see how we could honor written orders signed by the persons previously designated to draw on this account, without the assurance of our Government that such persons still have authority to act. Nor have we any authority for the transfer of these funds.

We must, therefore, for the present continue to hold these funds to the credit of such account.

Very truly yours, (Sig.) Charles H. Sabin, President.

CHS:L.

[fol. 177] DEFENDANT'S EXHIBIT 7

Copy

December 9, 1921.

Honorable Charles E. Hughes, Secretary of State, Washington, D. C.

Refer to R

SIR:

On December 2nd you wrote in regard to a credit of five million dollars which is supposed to stand on the books of our Company in favor of the Government of Russia, and I am pleased to supply you with the facts in connection with this matter.

The account was opened directly by the Russian Imperial Government and the balance at the time of the fall of the Kerensky Government was about $5,000,000. The Russian Ambassador in this country never had authority to draw on this account and never attempted to exercise any control.

Shortly after coming into power the Soviet Government took over and merged into the government treasury all banks in Russia, thereby confiscating their property and all balances therein, including those in favor of this Trust Company, representing in value over eight million dollars. As soon as we learned of this seizure early in 1918, we, on advice of counsel, applied the deposit account of the Russian Government with us as a partial offset against the greater amount due to us by the Russian Government through seizure of our property, and when there is a Government in Russia recognized by the United States we shall press our [fol. 178] claim for the balance due us, together with interest thereon.

After the fall of the Kerensky Government and the coming into power of the Soviet Government, the officials of the State Department and the Treasury Department took up the matter of this account with us with a view of having such funds thrown in with other Russian Government funds and used for the purpose of paying off the Russian debts to creditors in the United States. It is our understanding that after an investigation they came to the conclusion that these funds were not available for that purpose.

We deeply sympathize with the efforts to relieve the suffering in Russia but our loss is already so great that we cannot either morally or legally give up funds which have been applied as a partial offset to this loss.

Very truly yours, Charles H. Sabin, Chairman of Board.

(Initialed C. H. S.)

[fol. 179] DEFENDANT'S EXHIBIT 8

Financial Attache to the Russian Embassy

Room 901, Flatiron Bldg.,
New York, July 12, 1917.

Guaranty Trust Company, No. 140 Broadway, New York City.

DEAR SIRS:

Referring to your letter of July 2nd, I beg to enclose herewith check to your order for the sum of Five Million ($5,000,000) Dollars, to reimburse you for payment made by you to yourself for account of Banque Russo Asiatique, in accordance with cablegram received from Section Etrangere Ministere Finances.

The amount of $3,784,510.22 will serve as reimbursement to Section Etrangere Ministere Finances for the balance of the same account, which was debited on account of the above mentioned payment.

The amount of $1,215,489.78 will serve as reimbursement to yourselves, for the amount advanced to complete the above mentioned payment.

Yours truly, (Signed S. Ughet), Russian Financial Attache.

HAL*JL.
Enc.

[fol. 180] DEFENDANT'S EXHIBIT 9

July 13, 1917.

S. Ughet, Esq., Russian Financial Attache, Room 901, Flat-iron Bldg., New York City.

DEAR SIR:

We beg to acknowledge receipt of your favor of the 12th instant, enclosing check for $5,000,000 which we have passed to the credit of the account on our books of the Section Etrangere Ministere Finances.

We note that you advise that of the above amount, $3,784,-510.22 is to serve as a reimbursement to the Section Etrangere and $1,215,489.78 to ourselves in connection with the payment of $5,000,000 made by ourselves, to ourselves for account of the Banque Russo Asiatique under instructions of the Section Etrangere Ministere Finances.

However, we also wish to advise that after conferring with you and making the above $5,000,000 payment, we received instructions from the Chancellor of Credit, to advise the National City Bank of the exact amount of the overdraft appearing on our books and which was to be covered by them. In the interim, we had received a deposit of $100,000 for their credit and after charging up commission, cable charges, etc., we found that the debit appearing was $1,154,-918.13, and which amount we received from the National City Bank.

Accordingly, we have placed the total of the above $5,000,000 to the account as mentioned.

Thanking you, we are,

Yours very truly, —— ——, Treasurer.

NDP:AB:297

[fol. 181] DEFENDANT'S EXHIBIT 10

Letterhead of Coudert Brothers

June 17, 1919.

Messrs. Stetson, Jennings & Russell, Attention of Mr. Russell, #15 Broad Street, New York City.

DEAR SIRS:

Mr. Ughet the Russian Financial Attache who is also acting as the Russian Charge d'Affaires has just informed the

writer that Mr. Murphy of The Guaranty Trust Company said he would ask your Mr. Russell to discuss the legal situation with us in regard to the Russian fund of approximately $5,000,000., on deposit with it. If agreeable the writer will be pleased to call at your office tomorrow morning. Will you kindly telephone us?

Yours very truly, Coudert Brothers.

JPM-KM.

[fol. 182] DEFENDANT'S EXHIBIT 11

[In handwriting:] Russian Government

Letterhead of Coudert Brothers

June 18, 1919.

Messrs. Stetson, Jennings & Russell, #15 Broad Street, New York City

Attention of Mr. Russell.

DEAR SIR:

We are sending to you under separate cover the following:

(1) Record in Circuit Court of Appeals in Agency of Canadian Car v. American Can;

(2) Briefs in Circuit Court of Appeals;

(3) Opinion of Circuit Court of Appeals;

(4) Papers on motion for dismissal of suit in case of Russian Government v. Lehigh Valley Railroad;

(5) Brief submitted in support of the motion;

(6) Opinion of Judge Mayer in Russian Government v. Lehigh Valley Railroad Co., dated January 27, 1919.

Will you kindly return all of these papers at your convenience?

Yours very truly, Coudert Brothers.

JPM-KM.

Enclosures.

[fol. 183] DEFENDANT'S EXHIBIT 12

Russian Government Deposit

Memo. June 26, 1919. C. H. R.

In reply to enquiry, Mr. Murray of Coudert Brothers says that in his opinion the Ambassador is the Russian Government, and has the right to direct the Guaranty what to do with the Russian Government deposit; that, as held in the Lehigh Valley case, the Ambassador can institute an action against the Guaranty in the name of the Russian Government; that, under the opinion in the Can case, there can be no defence to a demand by the Ambassador; that we cannot go back of his authority as Ambassador, as shown by the State Department certificate; that in the case of a judgment against the Guaranty, it could pay by cheque to the order of the Russian Government, delivered to the attorneys for the Russian Government.

[fol. 184] DEFENDANT'S EXHIBIT 13

[In handwriting:] Russian Government

July 1, 1919.

Messrs. Coudert Bros., 2 Rector Street, New York City.

(Attention Mr. John P. Murray)

DEAR SIRS:

I beg to return to you herewith under separate cover the various printed and other papers which you were so good as to send to me for examination on June 18th.

Thanking you for your kindness in giving me an opportunity to examine these papers, I am,

Very truly yours, C. H. R.

CHR FAF.

[fol. 185] DEFENDANT'S EXHIBIT 14

July 3rd, 1919.

Guaranty Trust Company, 140 Broadway, New York City.

GENTLEMEN:

As Chairman of the Protective Committee for the 6½% $50,000,000 Russian Credit, I send to you herewith a copy

of a letter which has just been received by me from Mr. Ughet, the Charge d'Affaires ad Interim of Russia.

On behalf of the Committee, I beg to inquire whether your Company will comply with the suggestion to transfer to the National City Bank the sum of $1,625,000 in order to pay six months interest on the credit to July 10th, 1919.

Yours very truly, (Signed) J. H. Fulton, Chairman of the Protective Committee for the 6½% $50,000,000 Credit.

[fol. 186] DEFENDANT'S EXHIBIT 15

[In handwriting:] Russian Government

Letterhead of Guaranty Trust Company of New York

July 11, 1919.

Mr. Chas. H. Russell, % Messrs. Stetson, Jennings & Russell, 15 Broad Street, New York City.

DEAR MR. RUSSELL:

In accordance with your request to Mr. Jay I am enclosing copies of the following letters for your files: letter of Mr. Ughet to Mr. Fulton, Chairman of the Protective Committee; a letter from Mr. Fulton to Mr. Sabin and the reply of Mr. Sabin to Mr. Fulton.

Yours very truly, Raleigh S. Rife.

313:37.
Enc.

[fol. 187] DEFENDANT'S EXHIBIT 16

Russian Embassy, Washington

June 16, 1919.

To Messrs. J. P. Morgan & Co., The National City Bank of New York, Guaranty Trust Co. of New York, Lee Higginson & Company, Kidder, Peabody & Company.

GENTLEMEN:

On behalf of the Government of Russia, I desire to announce that due to circumstances beyond control I shall

be unable to provide funds to meet at maturity the Imperial Russian Government $50,000,000 6½% Three-Year Credit.

I have been in communication with the All-Russian Government in Omsk, under Admiral Kolchak, and, while I have received no reply as yet, the published accounts of Admiral Kolchak's communication to the Allied Governments clearly state that the external obligations of the Russian Government issued prior to November 1917 will be recognized. I am sure this matter has been given earnest and serious consideration, and I am confident that the holders of this obligation may reasonably expect arrangements to be made for the payment of this debt as soon as the All-Russian Government is formally recognized.

Yours very truly, S. Ughet, Charge D'Affaires ad Interim of Russia.

[fol. 188] DEFENDANT'S EXHIBIT 16A

Russian Embassy, Washington

July 8, 1919.

To Messrs. J. P. Morgan & Company, The National City Bank of New York, Guaranty Trust Company of New York, Messrs. Lee Higginson & Company, Messrs. Kidder, Peabody & Company.

GENTLEMEN:

I wish to announce on behalf of the Government of Russia that temporarily we have not at our disposal sufficient funds in order to meet the payment of half-yearly interest due by the Russian Ministry of Finance to the Syndicate of the Banks on the $50,000,000. 6½% three-year credit when this interest falls due.

From the published accounts of statements by Admiral Kolchak, Supreme Chief of the All-Russian Government in Omsk, to the Allied Governments, as well as from my communications with the All-Russian Government in Omsk, it is absolutely clear that the External obligations of the Russian Government issued prior to November 1917 will be recognized and I have to state most emphatically that (to) the matter of meeting the principal and interest on

the $50,000,000. 6½% three-year credit is given most earnest and serious consideration and arrangements will be [fol. 189] made for the payment of this debt as soon as the All-Russian Government is formally recognized.

Yours very truly, S. Ughet, Charge D'Affaires ad Interim of Russia.

O. K. to send out circular. L. H. & Co.

(Notice sent out on ticker by J. H. F.)

SU:LM.
J. D. J.

DEFENDANT'S EXHIBIT 17

Translation of Cable Received

No. 8417 New York, Jan. 23, 1917.

Taken up by | From Samen Directeur Chancellerie Operations Credit, Petrograd

BKg Dept | We have the honor to inform you Mr. Ughet has been appointed representative New York Ministère Finance Russie we beg you to give him possible assistance
No. 1986

Entered by A. J. C. Checked by J. N. Cable Charges.

[fol. 190] DEFENDANT'S EXHIBIT 18

A meeting of the Committee appointed to act under the Protective Agreement of holders of Certificates of Participation in the Imperial Russian Government $50,000,000.00 6½% Three Year Credit, due June 18, 1919, was held at #55 Wall Street, New York City, on July 2, 1919, at 3:30 o'clock, P. M.

Present: Messrs. Fulton, Jay, Smith, Sargent and Allen, constituting a majority of the Committee, and Mr. John A. Garver, counsel. Mr. Whitney was also present, representing Mr. Cochran of J. P. Morgan & Company.

Upon the recommendation of Messrs. Allen and Sargent, the Old Colony Trust Company, of Boston, Massachusetts, was appointed sole Depository in that city.

It was the opinion of all present that the members of the Committee should serve without compensation. In view of this it was decided that the maximum assessment under the Protective Agreement be reduced from $10 to $5 per $1,000. Certificate, or ½ of 1%. It was also decided to strike out the clause in Article 4 of the Protective Agreement, providing that the Agreement should not become operative until the owners of at least a majority of the entire issue should become parties to the Agreement.

On Motion, duly seconded, it was unanimously

Resolved, that the form of Agreement now presented, with changes as indicated above, be approved; and that The National City Bank of New York be appointed Depository [fol. 191] thereunder in the City of New York; and that the Old Colony Trust Company, of Boston, Massachusetts, be appointed Depository in that city, with the duties and authority therein provided.

The Chairman presented the following form of Certificates of Deposit to be issued by the Depository in exchange for Certificates of Participation:

No—. $— Par Value.

Certificate of Deposit of Participation Certificates in the Imperial Russian Government $50,000,000.00 6½% Three Year Credit

Due June 18, 1919

This Certifies that —— —— is entitled to an interest to the extent of $— par value in the $50,000,000.00 6½% Three Year Credit of the Imperial Russian Government, due June 18, 1919. The Certificates of Participation, representing such interest, have been deposited with the undersigned, as Depository, pursuant to a certain Protective Agreement, dated July 1, 1919, executed between John H. Fulton, and others, who are thereby appointed a Committee on behalf of the subscribers thereto and depositors thereunder and the undersigned as Depository, a copy of which Agreement is on file in the office of the undersigned. [fol. 192] The holder hereof takes and holds this Certificate subject to each and every of the terms and conditions of the

said Agreement and, by accepting this Certificate, assents thereto to the same extent as if he had personally executed the said Agreement.

This Certificate, and the rights and benefits evidenced hereby, are transferable by the holder in person, or by attorney thereunto duly authorized, on (the) books to be kept for that purpose by the undersigned. By the transfer of this Certificate, the transferor shall ipso facto part with all his rights in and to this Certificate, and all rights and benefits under the said Agreement represented hereby.

Dated, ——— —, ——.

The National City Bank of New York, as Depository, by ——— ——. Old Colony Trust Company, as Depository, by ——— ——.

(Form of Assignment on back.)

For value received —— hereby sell, assign and transfer unto —— the within Certificate of Deposit representing $— par value of the Certificates of Participation in the Imperial Russian Government $50,000,000.00 6½% Three Year Credit, [fol. 193] due June 18, 1919, and do hereby irrevocably constitute and appoint ——— ——, attorney to transfer the said Certificate of Deposit on the books of the Depository therein named, with full power of substitution in the premises.

Dated ——— —, 19—.

——— ——.

In presence of: ——— ——.

Notice.—The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

On motion, it was unanimously

Resolved, that the form of Certificate of Deposit, now presented to this meeting be in all respects approved, and that, upon the presentation and surrender to the respective Depositories of Certificates of Participation in the Credit, the Depositories be respectively authorized to issue to the respective holders of Certificates of Participation so surrendered, Certificates of Deposit representing the same.

A letter from Mr. Max Levy was read by the Secretary, requesting, on behalf of Diana F. Levy, one of the security

holders, a statement of the operations of the Syndicate, with particular reference to the amount of funds on hand. The [fol. 194] Secretary was directed to reply substantially to the effect that proceeds of the operation had been turned over in full to the Russian Government.

The Secretary read a letter from one of the security holders, inquiring if, as a holder of record on June 18, 1919, he would retain the right to interest due on that date in case of subsequent sale of his holdings. It was the sense of the meeting that such right would not be retained without express reservation, and the Secretary was directed to reply to that effect.

The Chairman then presented the following letter from Mr. Ughet, Charge d'Affaires ad interim of the Russian Government, to the Protective Committee, which was read by the Secretary and referred to Counsel for action:

"July 1, 1919.

"John H. Fulton, Esq., Chairman of the Protective Committee for the 6½% $50,000,000. Credit, The National City Bank of New York, 55 Wall Street, New York City.

DEAR SIR:

"From the last reports from Paris of the Associated Press, the financial circles in New York have certainly already learned the fact that the obligation of meeting the liabilities of the Russian National debt is one of the fundamental principles for the recognition by the Allied and Associated Powers of the Russian Government in Omsk, which obligation, besides the declaration of Admiral Kol- [fol. 195] chak of November 27th, 1918, has again been confirmed by Admiral Kolchak to the Peace Conference in Paris.

"The last payment of the interest on this $50,000,000. 6½% Credit becomes due July 10th involving the amount of $1,625,000.

"The Protective Committee formed by the banking institutions participating in the Syndicate of Banks is cognizant of the fact that after the Bolshevik uprising in 1917 and contrary to the repudiation at that time of the foreign debts by the Bolsheviks, the Russian Embassy considered it its moral duty, in accordance with the traditions of National

Russia to meet faithfully all her financial obligations, to pay regularly the interest and the commission to the National City Bank as same became due. Out of the general funds at the disposal of the Russian Embassy with the National City Bank on this operation alone, the interest and the commission were paid on January 10, April 10, July 10, and October 10, 1918, and on January 10 and April 10, 1919, besides regular payments of interest on all other financial obligations of Russia in the United States.

"Unfortunately, the Russian Embassy is now not in a position to meet the interest due July 10th out of its funds with the National City Bank owing to lack of same.

"The Protective Committee is possibly aware that the Ministry of Finance of the Provisional Government of Russia had with the Guaranty Trust Company on account, the actual credit balance of which is approximately $5,000,000.

"I beg to state that this amount, as far as I can ascertain, was opened first with $25,000,000. being 50% of the proceeds [fol. 196] of the above mentioned $50,000,000. operation. Later on other sums were credited to this account, but the main bulk of the funds constitutes the proceeds of the operation on which the interest becomes due July 10th.

"The Russian Ministry of Finance, in establishing the banking credit with the Syndicate, had evidently no intention to issue for this specific operation bonds on behalf of the Russian Government on the open market, but the Ministry of Finance possibly understood at that time that the banking institutions, signatories to this agreement, would offer on their own behalf the participation in said operation to the American public.

"The form of the bonds, in which this participation has been offered to the open market by the Syndicate of the Banks, and upon which is printed in large characters "Imperial Russian Government," possibly led to the impression that these bonds represent a direct issue of the Russian Government. At least, in the financial sections of the New York papers the quotation of these bonds has always been given as "6½% Imperial Russian Government bonds."

"In my opinion, had this credit operation been limited to the above banking institutions alone, or, if the bonds had been issued in other form, the question of making an agreement with the Syndicate of the Banks relative to extending the credit and postponement of the payment of the

interest would possibly have been facilitated as the interests of the open market would not have been involved and no publicity given to the failure of Russia to meet, for the first time, her financial obligations in the United States. My [fol. 197] opinion on this question seems further strengthened by the fact that the next payment of interest by the Russian Government on their direct financial operations on the open market is not due until December 1, 1919, thus affording the Russian Government in Omsk sufficient time to make necessary financial arrangements.

"I now venture to address the Protective Committee with the view of protecting the Russian National Credit in the United States, with the request to help us to meet the situation, and I beg the Syndicate of the Banks to do its utmost to pay the interest due on the bonds issued by the Syndicate on their own behalf.

"I believe that I am morally justified in making such a request and I am prepared to do everything in my power to assist the Syndicate of the Banks to meet the interest on their financial obligations, protecting thereby the Russian Credit in the United States, as well as the interests of the American holders of obligations issued by the Banks.

"In view of the above, I have the honor to submit for the kind consideration of the Protective Committee the following proposal:

"The Syndicate of the Banks to issue a request to the Guaranty Trust Company, holder of the funds of the Russian Ministry of Finance, to release and transfer $1,625,000. to the account of the National City Bank, as the representative of the said Syndicate, in order to meet the payment of the interest due by the Russian Ministry of Finance to the Syndicate. Such release of the funds should be made by the Guaranty Trust Co. under joint guarantee of the banking institutions participating in the $50,000,000. Credit. [fol. 198] On the other hand, the Syndicate of the Banks, so as to protect their own interests, to approach the United States Government with the request that it be confirmed to them that, in accordance with the actual policy of the Allied and Associated Powers, and particularly of the United States, it is not to be expected that formal recognition will be extended to any Russian Government which would not undertake to settle the Russian National debt.

"The funds provided in such a way will enable the Syndicate of the Banks to meet their own obligations to the American holders and indirectly protect the Russian credit in the United States.

"I should be extremely obliged if the Protective Committee would let me know as promptly as possible if such a proposal meets their views and if the Committee is prepared to submit this suggestion to the Syndicate of the Banks.

"I am, Dear Sir,

Very truly yours, (Signed) S. Ughet, Charge D'Affaires ad Interim of Russia."

The meeting then adjourned.

(Signed) Rodney Dean, Secretary.

[fol. 199] DEFENDANT'S EXHIBIT 19

A meeting of the Committee appointed to act under the Protective Agreement of holders of Certificates of Participation in the Imperial Russian Government $50,000,000 6½% Three Year Credit, due June 18, 1919, was held at #55 Wall Street, New York City, on July 8, 1919, at 2:15 o'clock, P. M.

Present: Messrs. Fulton, Jay, Smith, and Sargent, constituting a majority of the Committee, and Mr. John A. Garver, Counsel; Mr. Whitney, representing Mr. Cochran of J. P. Morgan & Company, and Mr. Sheldon, representing Mr. Allen of Lee, Higginson & Company.

The Chairman announced that on advice of Counsel he had transmitted to the Guaranty Trust Company a copy of the letter from Mr. Ughet, Charge d'Affaires ad interim of Russia, which was read at the last meeting, and had inquired if the Guaranty Trust Company were willing to release $1,625,000 to meet interest due July 10.

The Chairman announced that Mr. Ughet had received a cablegram from Admiral Kolchak, approving all of the acts of Mr. Ughet, in connection with the 6½% credit, and authorizing him, if requested, to issue scrip certificates to the committee for the interest. It was, however, decided that such scrip would have no special value, and might possibly prejudice the rights of the holders of the Participation Certificates.

A letter from Mr. George W. Markens was read by the Secretary, who was directed to acknowledge receipt.

The Chairman then presented a revised form of notice to [fol. 200] be sent to all holders of Certificates of Participation in the Credit.

On motion, duly seconded, it was

Resolved, that the form of notice now presented be approved, and that the Secretary be directed to send a copy to each holder of Certificates of Participation, at his address as registered with The National City Bank of New York, and to publish the same in New York and Boston newspapers.

The meeting then adjourned.

Rodney Dean, Secretary.

DEFENDANT'S EXHIBIT 20

A meeting of the Committee appointed to act under the Protective Agreement of the Holders of Certificates of Participation in the Imperial Russian Government $50,000,000 6½% Three Year Credit, due June 18, 1919, was held at #55 Wall Street, New York City, on July 11, 1919, at 11:30 o'clock, A. M.

Present: Messrs. Fulton, Jay, Smith, Sargent and Allen, constituting a majority of the Committee, and Mr. John A. Garver, Counsel. Mr. Ewing of J. P. Morgan & Company was also present.

The Chairman announced that he had received the following letter from Mr. Sabin, President of the Guaranty Trust Company, which was read by the Secretary:

[fol. 201]

"July 10, 1919.

Mr. J. H. Fulton, Chairman of the Protective Committee for the 6½% $50,000,000 Russian Credit, 55 Wall Street, New York City.

DEAR MR. FULTON:

"In response to your letter of July 3rd enclosing a letter from Mr. Ughet, Charge d'Affaires ad Interim of Russia, I wish to state, as I have previously stated, that no one now has authority to draw Russian funds on deposit in this bank, therefore we cannot act upon Mr. Ughet's suggestion. In

order that your Committee may understand our position in this matter, I attach herewith copy of letter dated June 9th to the Counselor of the State Department at Washington, which I believe fully states our position.

Very truly yours, (Signed) Charles H. Sabin, President."

(Enclosure.)

"June 9, 1919.

Hon. Frank L. Polk, Counselor, Department of State, Washington, D. C.

DEAR FRANK:

"Upon my return from Southampton this morning, I find your letter of June 4.

[fol. 202] "The suggestion that the Russian Government deposit with the Guaranty Trust Company should be used, as far as necessary, to pay the interest falling due on June 18 on one of the Russian loans was made at a recent conference of bankers here and has already been carefully considered by us.

"We hold the deposit for account of "the Russian Government", and shall be under the duty to account for this deposit to a regular and responsible Russian Government whenever such a government is established and calls upon us to pay it or to apply it according to its direction. In the meantime, we can only hold it. We consider that we have no more right or authority to use it now to pay interest on the bonds of a certain Russian loan than we should have to apply part or all of the deposit of any individual with us to the payment of such individual's debts upon our own initiative. Our action in using part of this deposit for such purpose might be disapproved by a future Russian Government.

"If it is important that Russian credit in this country should be maintained or if for any reason whatever it is desirable in the interests of our country that the interest about to become due shall be paid, we stand ready to do our share with other financial institutions in helping to meet the emergency, but not because of any duty arising from the fact that we held the deposit referred to.

"Another Russian loan matures in 1921 and probably a similar question will arise at that time. I understand that

there already have been defaults in England and France in the payment of interest on Russian loans; and I do not [fol. 203] believe that the bondholders here will be surprised if their interest is not paid on June 18 next.

"For these reasons we do not see our way clear to make use of any part of the Russian Government deposit for the purpose mentioned.

"As you know, early in 1918 the present government of Russia, at that time and since in power at Petrograd and Moscow and other financial centres, absorbed all the commercial banks in Russia into the State Bank, seized all their assets and all deposits and credits of other institutions and individuals with them, decreed that the commercial banks had ceased to exist, and announced that it would liquidate their liabilities. At that time we had accounts, including large deposits, in the Russian commercial banks in Russia. Under the circumstances we considered it necessary and proper to consolidate the Russian Government account and the accounts of the Russian commercial banks, the result being, according to our computation, a credit balance in our favor. This situation, as you will readily understand, gives rise to certain questions which can be satisfactorily settled only upon restoration or establishment of a responsible government in Russia, when undoubtedly all of them, in so far as they concern American financial interests, will, with the aid of our Government be properly disposed of. In the meantime, however, as we regard it, both in considering the Russian Government account by itself, and in considering the consolidated account referred to, any payment made by us now would leave us in a position where we might be required to pay the same amount again.

Very sincerely yours," ——— ———.

[fol. 204] It was decided to transmit the following letter to Mr. Ughet:

"July 11, 1919.

S. Ughet, Esq., Charge d'Affaires ad Interim of Russia, Russian Embassy, Washington, D. C.

DEAR SIR:

"Replying to your letter of July 1, the Committee transmitted a copy of your letter to the Guaranty Trust Com-

pany inquiring if the Guaranty Trust Company were willing to release the sum of $1,625,000 to meet interest due July 10. The Committee today received a reply from Mr. Sabin, President of the Guaranty Trust Company, copy of which I enclose herewith.

"With reference to the point which you raise regarding the issuance of Participation Certificates to others than the banks mentioned in the contract, the Committee is informed that in all the negotiations between the representatives of the banks and the Russian Ministry of Finance it was freely discussed and clearly understood that participation in the Credit would be offered to others in America than the banks themselves, and that the banks were simply acting as organizers and managers of an American Syndicate. This is in accordance with the general banking practice in connection with transactions of this magnitude, where the procedure always is for a few banks to organize for managing [fol. 205] and distributing the loan among a large number of participants.

"All of the above is in accordance with the spirit and content of the contract itself, which in no part contains any restriction as to the number of participants in the Credit.

Yours very truly, (Signed) John H. Fulton, Chairman."

The question of a formal announcement regarding payment of interest on the Credit was brought up, and it was decided that an announcement should be made by the Chairman to the effect that no funds were available for payment of this interest.

The meeting then adjourned.

Rodney Dean, Secretary.

[fol. 206] DEFENDANT'S EXHIBIT 21

Address Official Communications to The Secretary of State, Washington, D. C.

[In handwriting:] Mr. Powell, Asst. Comptroller.

(Seal)

Department of State, Washington

In reply refer to R. December 2, 1921.

Guaranty Trust Company, New York City, New York.

GENTLEMEN:

In connection with certain projects for the organization of relief for the famine sufferers of Russia, it has been reported to the Department of State that you have on your books a credit of approximately $5,000,000 in favor of the Government of Russia or of some organ of the Russian Government.

I should very much appreciate the receipt of any information which you may be able to give as to this matter in order that the Department may be informed of all the potential assets of the Russian people in this country.

I am, Gentlemen,

Your obedient servant, (Signed) Charles E. Hughes.

[fol. 207] DEFENDANT'S EXHIBIT 22

December 9, 1921.

Honorable Charles E. Hughes, Secretary of State, Washington, D. C.

SIR: Refer to R.

On December 2nd you wrote in regard to a credit of five million dollars which is supposed to stand on the books of our Company in favor of the Government of Russia, and I am pleased to supply you with the facts in connection with this matter.

The account was opened directly by the Russian Imperial Government and the balance at the time of the fall of the Kerensky Government was about $5,000,000. The

Russian Ambassador in this country never had authority to draw on this account and never attempted to exercise any control.

Shortly after coming into power the Soviet Government took over and merged into the government treasury all banks in Russia, thereby confiscating their property and all balances therein, including those in favor of this Trust Company, representing in value over eight million dollars. As soon as we learned of this seizure early in 1918, we, on advice of counsel, applied the deposit account of the Russian Government with us as a partial offset against the greater amount due to us by the Russian Government through seizure of our property, and when there is a Government in Russia recognized by the United States we shall press our claim for the balance due to us, together with interest thereon.

[In handwriting:] Minister of Finance, Imperial Russian Gov. $5,001,829.79, Merged with Russian Gov. a/c.

[fol. 208] After the fall of the Kerensky Government and the coming into power of the Soviet Government, the officials of the State Department and the Treasury Department took up the matter of this account with us with a view of having such funds thrown in with other Russian Government funds and used for the purpose of paying off the Russian Debts to creditors in the United States. It is our understanding that after an investigation they came to the conclusion that these funds were not available for that purpose.

We deeply sympathize with the efforts to relieve the suffering in Russia but our loss is already so great that we cannot either morally or legally give up funds which have been applied as a partial offset to this loss.

Very truly yours, —— ——, Chairman of Board.

[fol. 209] DEFENDANT'S EXHIBIT 23

Address Official Communications to The Secretary of State, Washington, D. C.

(Seal)

Department of State, Washington

In reply refer to So-861.51/1361.

January 17, 1922.

Guaranty Trust Company, 140 Broadway, New York City.

GENTLEMEN:

The Department acknowledges with thanks the receipt of your letter of December 9, 1921, furnishing information in regard to a credit of approximately $5,000,000 which had been reported to stand on the books of your Company in favor of the Government of Russia or of some organ of that Government. Your letter has enabled the Department to identify the reported credit with a sum which, according to the Department's information, was deposited with your Company on July 12, 1917, by Mr. Serge A. Ughet, Russian Financial Attaché. This sum is understood to have been deposited to reestablish an account originally established by the Foreign Section, Chancery of Credits, Ministry of Finance, of the Imperial Russian Government in 1916 [fol. 210] but overdrawn to the extent of $1,215,489.78 by a payment, on or about July 2, 1917, at the direction of the Foreign Section, of $5,000,000 for the account of the Russo-Asiatic Bank, Petrograd.

In this connection the Department notes your statement of your understanding that "after the fall of the Kerensky Government and coming into power of the Soviet Government" officials of the State Department and the Treasury Department investigated the possibility of the application of the above mentioned sum to the payment of certain Russian debts in the United States and concluded that this sum was not available for the purpose suggested. A careful search of the records of this Department and the records of the Treasury Department has failed to disclose that the two Departments came to the conclusion which you understand to have been reached. The records indicate that the two Departments did not acquiesce in the decision

of your Company to apply the sum in question as a partial offset against the sums said to have been seized by the so-called Soviet Government.

I am, Gentlemen,

Your obedient servant, (Signed) Charles E. Hughes.

[fol. 211] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING TESTIMONY OF DOING TO BE TAKEN—January 6, 1936

The above named plaintiff having duly moved for an order of this Court directing that the testimony of Mahlon B. Doing be taken by deposition on behalf of the plaintiff for use by the plaintiff in opposition to the defendant's notice of motion, dated October 21, 1935, for the dismissal of the complaint, and said motion having come on regularly to be heard, now after reading the complaint herein, verified the 21st day of September, 1934, and after reading and filing the notice of motion herein, dated December 12, 1935, and after hearing Francis H. Horan, Assistant United [fol. 212] States Attorney for the Southern District of New York, of counsel for the plaintiff in support of said motion, and Davis Polk, Wardwell, Gardiner & Reed (Ralph Carson, Esq., of counsel) having appeared and not opposing the granting of said motion,

Now, on motion of Lamar Hardy, United States Attorney for the Southern District of New York, attorney for the plaintiff, it is

Ordered that Mahlon B. Doing, Esq. attend before any referee hereinafter designated by the Court in this action and give testimony as to certain negotiations between Coudert Brothers, as attorneys for Boris Bakhmetev as Ambassador of the State of Russia, and Stetson, Jennings & Russell, as attorneys for the defendant herein, relative to the disposition of a certain deposit account which is the subject of the above entitled action; and it is further

Ordered that Mahlon B. Doing, Esq. may submit his affidavit as to the aforesaid negotiations in lieu of any testimony hereinabove required.

Francis G. Caffey, U. S. D. J.

[fol. 213] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF MAHLON B. DOING

STATE OF NEW YORK,
County of New York, ss:

Mahlon B. Doing, being duly sworn, deposes and says:

I have been associated with the firm of Coudert Brothers since July, 1916, and have been a member of the firm thereof since January 1, 1927.

John P. Murray was a member of the firm of Coudert Brothers at all times during my association with the firm up to January 1, 1927 and was in charge of the affairs of the Russian Government for which the firm was counsel during that entire period. During his membership in the firm I was his assistant, and since January 1, 1927 I have been in charge for the firm of all matters of the Russian Government, which we represented continuously until November, 1933, when the Government of the United States recognized the Union of Soviet Socialist Republics as the de jure Government of Russia.

[fol. 214] Since January 1, 1927 the files of our firm pertaining to the affairs of the Russian Government have been under my control, including a file entitled "Russian Government—Guaranty Trust Co. (Re Funds Deposited with Trust Company)."

I have within the past week examined the file above mentioned and annex hereto copies of the following correspondence from that file:

(1) Letter dated June 17, 1919, from John P. Murray of Coudert Brothers to Mr. Russell, of Stetson, Jennings & Russell, office carbon in our files, Exhibit "1".

(2) Letter dated June 18, 1919, from John P. Murray of Coudert Brothers to S. Ughet, Financial Attache to the Russian Embassy, office carbon in our files, Exhibit "2".

(3) Letter dated June 18, 1919, from John P. Murray of Coudert Brothers to Mr. Russell of Stetson, Jennings & Russell, office carbon in our files, Exhibit "3".

(4) Letter dated June 23, 1919, from John P. Murray of Coudert Brothers to S. Ughet, Financial Attache to the Russian Embassy, office carbon in our files; Exhibit "4".

(5) Letter dated June 24, 1919, from S. Ughet, Financial Attache to the Russian Embassy, to John P. Murray of Coudert Brothers, original in our files, Exhibit "5".

(6) Letter dated June 26, 1919, from John P. Murray of [fol. 215] Coudert Brothers to S. Ughet, Financial Attache to the Russian Embassy, office carbon in our files, Exhibit "6".

(7) Letter dated June 28, 1919, from John P. Murray of Coudert Brothers to S. Ughet, Financial Attache to the Russian Embassy, office carbon in our files. Exhibit "7" annexed is a duplicate office carbon copy of this letter.

(8) Letter dated July 1, 1919, from C. H. Russell of Stetson, Jennings & Russell to Coudert Brothers, original in our files, Exhibit "8".

(9) Letter dated July 1, 1919, from S. Ughet Financial Attache to the Russian Embassy, to John P. Murray of Coudert Brothers, original in our files, Exhibit "9".

(10) Letter dated July 8, 1919, from John P. Murray of Coudert Brothers to S. Ughet, Russian Financial Attache to the Russian Embassy, office carbon in our files. Exhibit "10" annexed is a duplicate office carbon copy of this letter.

(11) Letter dated July 14, 1919, from S. Ughet, Financial Attache to the Russian Embassy, to John P. Murray of Coudert Brothers, original in our files, Exhibit "11".

(12) Letter dated September 12, 1921 from Boris Bakhmeteff, Russian Ambassador to the United States, to John [fol. 216] P. Murray of Coudert Brothers, original in our files, Exhibit "12".

(13) Letter dated September 14, 1921 from John P. Murray of Coudert Brothers to Boris Bakhmeteff, Russian Ambassador to the United States, office carbon in our files, Exhibit "13".

(14) Letter dated September 21, 1921, from John P. Murray of Coudert Brothers to Allen Wardwell, office carbon in our files, Exhibit "14".

(15) Letter dated September 23, 1921 from John P. Murray of Coudert Brothers to Boris Bakhmeteff, Russian

Ambassador to the United States, office carbon in our files, Exhibit "15".

(16) Letter dated October 8, 1921, from D. Pertzoff of the office of the Financial Attache to the Russian Embassy, to John P. Murray of Coudert Brothers, original in our files, Exhibit "16".

(17) Letter dated October 14, 1921, from said D. Pertzoff to John P. Murray of Coudert Brothers, original in our files, Exhibit "17".

(18) Letter dated October 14, 1921, from John P. Murray of Coudert Brothers to said D. Pertzoff, office carbon [fol. 217] in our files, Exhibit "18".

Mahlon B. Doing.

Sworn to before me this 15th day of January, 1936.
Thomas B. Moran; Notary Public, Queens County.

[fol. 218] EXHIBIT "1", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

June 17, 1919.

Messrs. Stetson, Jennings & Russell, #15 Broad Street, New York City.

Attention of Mr. Russell

DEAR SIRS:

Mr. Ughet the Russian Financial Attache who is also acting as the Russian Charge d'Affaires has just informed the writer that Mr. Murphy of The Guaranty Trust Company said he would ask your Mr. Russell to discuss the legal situation with us in regard to the Russian fund of approximately $5,000,000, on deposit with it. If agreeable the writer will be pleased to call at your office tomorrow morning. Will you kindly telephone us?

Yours very truly, —— ——.

JPM:KM.

[fol. 219] EXHIBIT "2", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

June 18, 1919.

Russian Government—re Guaranty Trust Co.

S. Ughet, Esq., Financial Attache to the Russian Embassy, Russian Embassy, Washington, D. C.

DEAR MR. UGHET:

Today I had a lengthy conference with Mr. Russell, counsel for The Guaranty Trust Company. The discussion covered a wide range, but at the conclusion he admitted that the real question was, would The Guaranty Trust Company be able to successfully defend a suit if one was instituted in the name of the Russian Government? I advised him that you had no desire to commence a suit; that your relations with all the financial institutions had been very friendly and that you desired them to continue so. My interview with him was most pleasant and as bearing upon the question whether the Courts are bound by the action of our State Department and whether The Guaranty Trust Company could in the Court successfully defend a suit, I agreed to send him material for consideration. Enclosed you will find copy of a letter which I have this day written him.

During our interview I suggested that The Guaranty Trust Company would run no risk if it drew a check to the [fol. 220] order of the Russian Government provided that if the Bank which received such check for deposit guaranteed the endorsement in behalf of the Government. He said that that phase of the matter so far as he knew had never been presented to The Guaranty Trust Company and he did not know what would be the attitude of its officials. I told him that I was not sure that The National City Bank would guarantee your endorsement as Financial Attaché for Russia but that I could probably find out. He would not commit himself as to what The Guaranty Trust Company would do if a check was drawn to the order of the Russian Government and if the same was endorsed by you and if your endorsement was guaranteed by The National City Bank. He asked me to give him a little time to study the entire situation and more particularly the papers which I

am sending to him and I told him that perhaps in the meantime I could ascertain if it would be possible to have an endorsement in behalf of the Russian Government guaranteed by the Bank in which the check would be deposited.

From the way in which Mr. Russell spoke, I doubt if I will hear from him before Monday. Perhaps by that time you can let me know the chances of having an endorsement guaranteed.

Yours very truly, —— ——.

JPM:KM.
Enclosure.

[fol. 221] EXHIBIT "3", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

June 18, 1919.

Messrs. Stetson, Jennings & Russell, #15 Broad Street, New York City.

Attention of Mr. Russell

DEAR SIR:

We are sending to you under separate cover the following:

(1) Record in Circuit Court of Appeals in Agency of Canadian Car v. American Can;

(2) Briefs in Circuit Court of Appeals;

(3) Opinion of Circuit Court of Appeals;

(4) Papers on motion for dismissal of suits in case of Russian Government v. Lehigh Valley Railroad;

(5) Brief submitted in support of the motion;

(6) Opinion of Judge Mayer in Russian Government v. Lehigh Valley Railroad Co., dated January 27, 1919.

Will you kindly return all of these papers at your convenience?

Yours very truly, —— ——.

JPM:KM.
Enclosures.

[fol. 222] EXHIBIT "4", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

June 23, 1919.

Russian Government—re Guaranty Trust Company

S. Ughet, Esq., Financial Attache to the Russian Embassy, Suite 1811, Flatiron Bldg., New York City.

DEAR MR. UGHET:

I have spoken to Mr. Russell and asked him if he had reached any conclusion in regard to the credit of The Guaranty Trust Company. He explained to me that he had been out of the City and had been unable to give the matter any further attention. I urged him to examine the papers which I submitted and let me know as soon as possible what conclusion he reaches. He said he would try to do so within the next few days.

In answer to an inquiry as to whether I could inform you that I would hear from him by Friday he replied that he would do his best but that he would not definitely promise, protesting that he was quite overwhelmed with work. Of course, it may be that The Guaranty Trust Company had informed him that there is no special hurry. I know of no way in which I can expedite his opinion except by communicating with him from time to time. This course I will pursue unless I hear from you not to do so.

Yours very truly, —— ——.

JPM:KM.

[fol. 223] EXHIBIT "5", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Financial Attache to the Russian Embassy

New York, June 24, 1919.

1-3749.

J. P. Murray, Esq., Coudert Bros., #2 Rector Street, New York City.

DEAR MR. MURRAY:

Your letter of yesterday's date in re Russian Government vs. Guaranty Trust Company came duly to hand and I

note the evasive replies given you by Mr. Russell, and that there is no way to make sure that his reply should reach you by Friday next.

I appreciate indeed the trouble you have taken in this matter and shall feel obliged if you please remind the Counsel of the Guaranty Trust Company, from time to time, that an answer is expected.

I am, dear Mr. Murray,

Yours very truly, S. Ughet, Russian Financial Attache.

JJ:LM.

[fol. 224] EXHIBIT "6", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

June 26, 1919.

Russian Government—Guaranty Trust Company

S. Ughet, Esq., Financial Attache to the Russian Embassy, Russian Embassy, Washington, D. C.

DEAR MR. UGHET:

Today I again spoke to Mr. Russell, counsel for The Guaranty Trust Company and had quite a lengthy conversation with him from which I rather drew the inference that he does not now seriously dispute our legal views. He promised to confer with the officers of The Guaranty Trust Company today or tomorrow and to let me know their conclusion.

Your very truly, —— ——.

JPM:KM.

[fol. 225] EXHIBIT "7" ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

June 28, 1919.

Russian Government—Guaranty Trust Company

S. Ughet, Esq., Financial Attache to the Russian Embassy, Suite 1811 Flatiron Bldg., New York City.

DEAR MR. UGHET:

Mr. Russell today explained to me that The Guaranty Trust Company does not feel that it can safely pay over

the $5,000,000, on the direction of the Russian Embassy without a judgment of a Court. In answer to a question as to whether The Guaranty Trust Company or he suggested that we should commence suit he replied "No," that he made no suggestion of any kind." He said that he had studied the American Can and Lehigh Valley Railroad Company cases and believed that he understood their force and effect. His clients, however, felt that the situation with regard to The Guaranty Trust Company is such that it cannot be settled until there is a staple Government in Russia. Its reasons are that it had credits with various Commercial Banks in Russia; that such Commercial Banks have been taken over by the Bolshevik Government and that while such Government is not recognized by the United States, still the Trust Company finds itself in the position of having a de facto Government take over property belonging to it exceeding in value the credit claimed by the Government recognized by the State Department of the United States.

As I understand Mr. Russell, the officials of the Trust Company believe that the Courts would sympathize with its position and probably delay any decision or any action until the establishment of a staple Government in Russia.

Yours very truly, —— ——.

JPM:KM.

[fol. 226] EXHIBIT "8", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

Stetson, Jennings & Russell,

Mills Building, 15 Broad Street,

New York, July 1, 1919.

Messrs. Coudert Bros., 2 Rector Street, New York City.

(Attention Mr. John P. Murray)

DEAR SIRS:

I beg to return to you herewith under separate cover the various printed and other papers which you were so good as to send to me for examination on June 18th.

Thanking you for your kindness in giving me an opportunity to examine these papers, I am,

Very truly yours, (Signed) C. H. Russell.

CHR:FAF.

[fol. 227] EXHIBIT "9", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

Financial Attache to the Russian Embassy

1-3894. New York, July 1st, 1919.

J. P. Murray, Esq., Coudert Bros., #2 Rector Street, New York City.

MY DEAR MR. MURRAY:

I beg to acknowledge receipt of your letter of June 28th in which you explain to me, in the light of information submitted to you by Mr. Russell, the position of the Guaranty Trust Company with reference to the $5,000,000. Credit held by them.

I should be very glad to hear your opinion about the following two principal things.

1. What exactly could be called a "de facto Government in accordance with the International Law and if any International practice exists with reference to this question.

To my understanding a de facto Government can be only such which controls the majority of a certain country, or is recognized as such by the Foreign Governments, as it is the case with the Carranza Government in Mexico.

[fol. 228] On a superficial analysis of the geographical map of the former Russian Empire it can be proven that what is now under the Bolshevik control is not at all the majority of the Russian territory. If we should start at the northwest and go around the Russian map we will see that the following territories are not under the Bolshevik control.

Finland, Livonia, Courland, Estonia, Lethvia, Lithuania, Poland, Bessarabia, Several Black Sea Ports, Crimea, Entire Caucasus, Cuban Cosaks Territory, Don Cosaks Territory, Ural Cosaks Territory.

All Siberia up to the Pacific Coast and the Northern Territory of Russia.

To give an appellation of de facto government of Russia to a physical force which controls only Central Russia and a part of South Russia together with North and Middle Volga region, is almost impossible and furthermore Bolsheviki have not been recognized as de facto Government by any country of the world. It puzzles me why the Guaranty Trust Company decides to call the Bolsheviki bands the de facto Government of Russia.

[fol. 229] 2. Mr. Russell, in accordance with your letter, states that while the funds of the Guaranty Trust Company have been seized by the Bolsheviki bands, who, quite naturally are not recognized by the United States, the Guaranty Trust Company is not releasing the funds of the Russian National Government; the latter, though not yet recognized by the United States Government, is being represented in this country by the Russian Embassy, which, while it stands for and voices the ideals of National Russia, is duly recognized as such by the State Department of the United States.

The National Russian ideals through the history of our country always had as one of their main principles the punctual settlement of our National obligations.

We are not even asking to release the money in favor of the Russian Embassy, but to turn over out of these funds only $1,625,000 to the Syndicate of the Banks which has been formed for the banking operation of $50,000,000 and of which the Guaranty Trust Company is one of the participants, in order to enable these Banks with $1,625,000 to meet the interest on their own obligations, and in such a way to at least partly protect the Russian credit in the United States.

The facts given in your letter might perhaps enable us to make a certain presentation to the State Department and I should be very glad to hear your opinion in this matter and if it appeals to you that something could be done along these lines, I should then be extremely obliged to you if you will prepare a draft of a letter to Mr. Polk and send it to me in Washington.

I am, my dear Mr. Murray,

Sincerely yours, (Signed) S. Ughet, Russian Financial Attache.

SU:LM.

[fol. 230] EXHIBIT "10", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

July 8, 1919.

Russian Government—re Guaranty Trust Company

S. Ughet, Esq., Financial Attache to the Russian Embassy,
Suite 1811 Flatiron Bldg., New York City.

DEAR MR. UGHET:

Since the receipt of your letter of the first I have made considerable research on the subject of "de facto Governments." The phrase does not seem to have any very definite meaning. It has been applied not merely to a case where superior force has overthrown the established Government of an entire country, but also to cases where superior force has taken possession of and ruled a comparatively small section of a country.

In one of the important cases growing out of the Civil War in this country, viz, Williams v. Bruffy reported in 96 United States at page 176 the Supreme Court wrote at page 185:

"We do not question the doctrines of public law which have been invoked, nor their application in proper cases; but it will be found, upon examination, that there is an essential difference between the government of the Confederate States and those de facto governments. The latter are of two kinds. One of them is such as exists after it has expelled the regularly constituted authorities from the seats [fol. 231] of power and the public offices, and established its own functionaries in their places, so as to represent in fact the sovereignty of the nation. Such was the government of England under the Commonwealth established upon the execution of the king and overthrow of the loyalists. As far as other nations are concerned, such a government is treated as in most respects possessing rightful authority; its contracts and treaties are usually enforced; its acquisitions are retained; its legislation is in general recognized; and the rights acquired under it are, with few exceptions, respected after the restoration of the authorities which were expelled. All that counsel say of de facto governments is justly said of a government of this kind. But the Confederate government was not of this kind. It never represented the nation, it never expelled the public authorities from the

country, it never entered into any treaties, nor was it ever recognized as that of an independent power. It collected an immense military force, and temporarily expelled the authorities of the United States from the territory over which it exercised an usurped dominion; but in that expulsion the United States never acquiesced; on the contrary, they immediately resorted to similar force to regain possession of that territory and re-establish their authority, and they continued to use such force until they succeeded, it would be useless to comment upon the striking contrast between a government of this nature, which, with all its military [fol. 232] strength, never had undisputed possession of power for a single day, and a government like that of the Commonwealth of England under Parliament or Cromwell."

In a later case, Baldy v. Hunter, 171 United States, 388 the Court wrote at pages 400 and 401:

"From these cases it may be deducted—

"That the transactions between persons actually residing within the territory dominated by the government of the Confederate States were not invalid for the reason only that they occurred under the sanction of the laws of that government or of any local government recognizing its authority;

"That, within such territory, the preservation of order the maintenance of police regulations, the prosecution of crimes, the protection of property, the enforcement of contracts, the celebration of marriages, the settlement of estates, the transfer and descent of property, and similar or kindred subjects, were, during the war, under the control of the local governments constituting the so-called Confederate States;

"That what occurred or was done in respect of such matters under the authority of the laws of these local de facto governments should not be disregarded or held to be invalid merely because those governments were organized in hostility to the Union established by the national Constitution; this, because the existence of war between the United [fol. 233] States and the Confederate States did not relieve those who were within the insurrectionary lines from the necessity of civil obedience, nor destroy the bonds of society, nor do away with civil government or the regular administration of the laws, and because transactions in the ordinary

course of civil society as organized within the enemy's territory, although they may have indirectly or remotely promoted the ends of the de facto or unlawful government organized to effect a dissolution of the Union, were without blame, 'except when proved to have been entered into *with actual intent* to further invasion or insurrection;' and,

"That judicial and legislative acts in the respective States composing the so called Confederate States should be respected by the courts if they were not 'hostile *in their purpose* or mode of enforcement to the authority of the National Government, and did not impair the rights of citizens under the Constitution.'

"Applying these principles to the case before us, we are of opinion that the mere investment by Hunter, as guardian of the Confederate funds or currency of his ward in bonds of the Confederate States should be deemed a transaction in the ordinary course of civil society, and not, necessarily, one conceived and completed with an actual intent thereby to aid in the destruction of the Government of the Union, if contracts between parties resident within the lines of the insurrectionary States, stipulating for payment in Confederate notes issued in furtherance of the scheme to overturn [fol. 234] the authority of the United States within the territory dominated by the Confederate States, were not to be regarded, for that reason only as invalid, it is difficult to perceive why a different principle should be applied to the investment by a guardian of his ward's Confederate notes or currency in Confederate bonds—both guardian and ward residing at that time, as they did from the commencement of the civil war, within the Confederate lines and under subjection to the Confederate States."

Some consideration has been given in the past by the Department of State to the effect of acts of Insurgents temporarily in control of a Government upon property of American citizens. Some secretaries have displayed a tendency to adopt doctrines which would protect the property of American citizens. Mr. Cass who was Secretary of State just before the Civil War maintained that "the citizens or subjects of a foreign nation may carry on commerce with the portions of a country in the hands of either of the parties to a Civil War and without awaiting any action on the part of their own Government" toward the recognition of the Insurgents. In fact, in some cases he seems to have gone

to the extent of claiming that those in temporary de facto control of a Government have an absolute right to dispose of the public property of a Nation. In 1858 he wrote to the Peruvian Minister as follows:

"It is the duty of foreigners to avoid all interference under such circumstances (in cases of civil war), and to [fol. 235] submit to the power which exercises jurisdiction over the places where they resort, and, while thus acting, they have a right to claim protection, and also to be exempted from all vexatious interruption, when the ascendancy of the parties is temporarily changed by the events of the contest. Undoubtedly the considerations you urge respecting the true character of an armed opposition to a government are entitled to much weight. There may be local insurrections, armed opposition to the laws, which carry with them none of the just consequences recognized by the law of nations as growing out of a state of civil war. No fixed principle can be established upon this subject, because much depends upon existing circumstances. Cases, as they arise, must be determined by the facts which they present; and the avowed objects of the parties, their relative strength, the progress they respectively make, and the extent of the movement, as well as other circumstances, must be taken into view.

"While contending parties are carrying on a civil war those portions of the country in the possession of either of them become subject to its jurisdiction, and the persons residing there owe to it temporary obedience. But when such possession is changed by the events of the war and the other party expels its opponents, the occupation it acquires carries with it legitimate authority, and the right to assume and exercise the functions of a government. But [fol. 236] it carries with it no right, so far, at any rate, as foreigners are concerned, to give a retroactive effect to its measures and expose them to penalties and punishments and their property to forfeiture for acts which were lawful and approved by the existing government when done."

From the above you can see that the state of the law is such that The Guaranty Trust Company might well argue with the State Department that strict legal rules should not be applied to take away from it the deposit of Russian funds which it now has and that the matter should be held

in abeyance until the company ascertains what has become of its property which was located in Russia.

From a strict legal standpoint The Guaranty Trust Company cannot assert that the Bolshevik Government is a Government de jure or de facto for the simple reason that our State Department has never recognized it in either aspect and the Supreme Court has decided in Jones v. United States, 137 U. S. page 212:

"Who is the sovereign, de jure or de facto, of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government. This principle has always been upheld by this Court, and has been affirmed under a great variety of circumstances." [fol. 237] It is possible that the State Department might help with The Guaranty Trust Company. My fear, however, is that if it takes up with The Guaranty Trust Company the disposal of the whole or part of the Russian credit on deposit with the company and the company urges that as it has property in Russia it should be allowed to retain the deposit here until the Russian situation is settled and it is ascertained whether those claiming to be in power in Russia, have confiscated such property and whether, if so, a lawful government when established will restore the property, the State Department might allow the matter to drift and The Guaranty Trust Company might consider such drifting as a virtual victory.

My personal impression is against asking the State Department to take action. You might informally discuss it and endeavor to secure the views of the Department. If you can secure their views I will be very glad to talk over the situation with you. If you prefer I will discuss the situation with you before you speak to the State Department.

JPM-KM.

Yours very truly, —— ——.

[fol. 238] EXHIBIT "11", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

Financial Attache to the Russian Embassy

New York, July 14th, 1919.

1-4070.

J. P. Murray, Esq., Coudert Bros., 2 Rector Street, New York City.

MY DEAR MR. MURRAY:

I beg to express my sincere thanks for the thorough and exhausting analysis of the subject "de facto Government," as given in your letter of July 8th.

It is utterly useless to raise this subject with Mr. F. Polk, as the result of all conversations with him always pointed toward an appeal to the Supreme Court which in my mind is to be avoided at all for the time being.

Therefore all efforts have to be now mainly concentrated upon Mr. Sabin and his conversion to our views.

My letter to you was based solely upon the supposition that there could be given an interpretation to the "de facto Government" idea, which would enable us to take action through the State Department.

But since having heard from you I see that this is quite impossible.

Thanking you again, I am, my dear Mr. Murray.

Yours very truly, (Signed) S. Ughet, Russian Financial Attache.

JJ:LM.

[fol. 239] EXHIBIT "12", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

Russian Embassy, Washington

September 12, 1921.

MY DEAR MR. MURRAY:

You remember the $5,000,000 of Russian Governmental funds held by the Guarantee Trust Company of New York

and which we some years ago so unsuccessfully endeavored to release.

The famine in Russia and my desire to assist by all means possible the relief of the sufferings has compelled the Embassy to approach again the question of the funds with the Guarantee Trust Company. No formal steps have been taken in this matter, and will not be until we ascertain through informal negotiation the possibility of a satisfactory solution. Some hope lies in the fact that the present senior partner of the firm of Stetson and Jennings, Mr. Allen Wardwell, is deeply interested, personally, in Russian relief and sympathizes thoroughly with the endeavors of alleviating the plight of the Russian people. Mr. Wardwell has been approached through indirect channels and has shown a disposition to consider the matter. It is therefore desirable that you get in touch with Mr. Wardwell in order to ascertain more thoroughly how matters stand. Mr. Wardwell knows of my writing to you and would like to obtain from you an opinion as to the legal feature of the affair. You will understand that this is but an information discussion precursory to any eventual action.

Yours sincerely, (Signed) B. Bakhmeteff.

Mr. J. P. Murray, 2 Rector Street, New York City.

[fol. 240] EXHIBIT "13", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

September 14, 1921.

Honorable B. A. Bakhmeteff, Russian Embassy, Washington, D. C.

Re Guaranty Trust Company

DEAR MR. AMBASSADOR:

I have your letter of the 12th. Do you see any reason why I should not delay seeing Mr. Wardwell until after the decision in the suit of the Soviet vs. The Volunteer Fleet? The situation is a little complicated by an opinion rendered yesterday in the suit of the Soviets against Cibrario.

I had thought that I had in my files a statement of the facts in regard to the $5,000,000 fund from the Guaranty

Trust Company. I doubt however, if I ever had such a statement. If I had my stenographer, who is absent, has filed it so that I cannot locate it. I am now asking Mr. Ughet's office for the full facts, so that I hope to have them by the time I hear further from you. Enclosed is copy of the opinion of Judge McAvoy in the suit of the Soviet vs. Cibrario.

Yours very truly, —— ——.

JPM:AO'H.
Enc.

[fol. 241] EXHIBIT "14", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

September 21, 1921.

Allen Wardwell, Esq., #15 Broad Street, New York City.

DEAR SIR:

Mr. Bakhmeteff has suggested that I see you in regard to Russian Funds on deposit with the Guaranty Trust Company. Will you kindly let me know when it will be convenient for you to have me call to see you?

About two years ago I saw Mr. Russell of your firm in regard to the same matter. This I mention so that if you were not aware of that fact you might refer to your file before my visit.

Yours very truly, —— ——.

JPM:AO'H.

[fol. 242] EXHIBIT "15", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

September 23, 1921.

Re Guaranty Trust Company

Honorable B. A. Bakhmeteff, Russian Embassy, Washington, D. C.

DEAR MR. AMBASSADOR:

Today I saw Mr. Wardwell and he called into the conference Mr. Polk. Mr. Wardwell had been examining the file

and had read memoranda in regard to my conference in the summer of 1919 with Mr. Russell. Both spoke in the most flattering manner of yourself and both expressed a desire to help in any possible way to secure funds for the relief of those suffering in Russia. They both agreed however, that they could not advise the Guaranty Trust Company to depart from the position heretofore taken by their own office and by the Trust Company. They found on an examination of the records that their office was of the opinion that the Trust Company should not part with the fund, especially as it appeared that it stands to lose more than the amount of the fund.

Mr. Wardwell said that he also would write you a line.

Yours very truly, —— ——.

JPM:AO'H.

[fol. 243] EXHIBIT "16", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

Financial Attache to the Russian Embassy

Suite 805-7, 342 Madison Avenue

New York, October 8, 1921.

In re Guaranty Trust Company

MY DEAR MR. MURRAY:

Reverting to the latest conversations on the subject, I beg to say that two days ago the Russian Ambassador requested me to supply him not later than Monday next with a brief memorandum resuming the whole question.

I succeeded in getting such a memorandum ready now and while forwarding same to Washington wish to hand you a copy for your files, and as desired by Mr. Bakhmeteff, I shall very much appreciate if you will kindly have same considered and advise me if you have any remarks or suggestions to make relating thereto.

In regard to the conclusive part of the paper dealing with the subject of guarantees I should like to state that

the same was suggested by me in order so to say to force the issue.

I am, Dear sir,

Very truly yours, (Signed) D. Pertzoff.

Mr. J. P. Murray, Coudert Brothers, 2 Rector Street, New York, N. Y.

JDJ/D.

P. S.—Copies of letters mentioned in the memorandum have been handed to you by me personally. D. P.

[fol. 244] EXHIBIT "17", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

Financial Attache to the Russian Embassy

Suite 805-7, 342 Madison Avenue

New York, October 14th, 1921.

2175.

DEAR MR. MURRAY:

Re Guaranty Trust Co.

Kindly refer to my letter dated the 8th instant No. 2148 under cover of which I forwarded you copy of a Memorandum resuming the above question, with the request to advise me your opinion.

I did not yet hear from you and shall very much appreciate if you will kindly let me have the expression of your valuable opinion on the subject.

I am, Dear Mr. Murray,

Yours very truly, —— ——, Russian Financial Attache, by D. Pertzoff.

Mr. J. P. Murray, Coudert Brothers, 2 Rector Street, New York, N. Y.

JDJ/D.

[fol. 245] EXHIBIT "18", ANNEXED TO AFFIDAVIT OF MAHLON B. DOING

Copy

October 14, 1921.

In Re Guaranty Trust Company

D. Pertzoff, Esq., #342 Madison Avenue, New York City.

DEAR MR. PERTZOFF:

I thank you for sending me copy of your memorandum in regard to the deposit with The Guaranty Trust Company. It is my personal opinion that The Guaranty Trust Company will not release the fund unless considerable pressure is brought to bear upon it either by the Federal Government or by a judgment of a Court. I will be interested to learn of any further developments.

Yours very truly, —— ——.

JPM:KM.

[fol. 246] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF DIMITRY G. TER-ASSATOUROFF

Dominion of Canada,
Province of Quebec,
City and District of Montreal, ss:

Consulate General of the United States of America:

Dimitry G. Ter-Assatouroff, being duly sworn, deposes and says that the following answers were made by deponent in the City of Montreal, in the Dominion of Canada, to questions propounded by Leon E. Spencer, Assistant United States Attorney for the Southern District of New York, and that such statements as contained in the following answers made by deponent are true.

Q. What were your associations with the Imperial Russian Government?

A. I was with the Chancellery of the Credit Operation [fol. 247] of the Russian Ministry of Finance, and I was sent by the Ministry of Finance on the 4th of January,

1917 (old style calendar, which would be the 17th day of January, 1917, our calendar), to occupy the position of Assistant Representative of the Russian Ministry of Finance in the Russian Supply Committee in New York, and subsequently I was attached to the Russian Embassy in Washington as Assistant Financial Attache.

Q. When did you receive your designation as Assistant Financial Attache in Washington, approximately?

A. Sometime in 1918, I think; on account of the Russian Revolution it was delayed, and it took place in the beginning of 1918.

Q. Prior to that time what were your associations?

A. My official position was Assistant Representative of the Russian Ministry of Finance, but as far as my work was concerned there were no changes. It was a thing which had to be done but on account of the Russian Revolution was delayed.

Q. Were you ever affiliated in Russia with the Ministry of Finance?

A. Yes. The Chancellery of the Credit Operation of the Russian Ministry of Finance, which is the special chancellery for the dealing with all the credit matters abroad as well as inside of Russia. This concerns all loans.

Q. Could you give us some of the functions of the Chancellery of Credit?

A. The principal purpose was the issuing of all the loans, all the credit operations, all the internal and external [fol. 248] loans, holding of all the funds abroad; they were always in the name of the Chancellery of Credit. They were also controlled directly by the Ministry of Finance through the Credit Chancellery.

Q. Did the Chancellery of Credit carry various deposit accounts throughout the world?

A. Yes, the Chancellery of Credit carried very large amounts abroad, which amounted before the War to something like six hundred million roubles, or three hundred million dollars.

Q. Did those deposit accounts continue all during the War?

A. During the War part of it was repatriated and part of it was spent by the Russian Government in connection with the War.

Q. Were there several accounts outstanding as late as 1919?

A. By 1919 the two places where there were funds were in London and New York.

Q. Other than those two places you don't know?

A. Yes, but at that time they were not at the disposal of the Government in St. Petersburg because in 1919 there was the Bolshevist Government which was not recognized, but still officially there were.

Q. How were withdrawals made from these accounts?

A. The withdrawals were made on the signature of two of the officials of the Russian Chancellery of Credit. Of course the cables were always confirmed by those official letters.

Q. Do you mean to say that two individuals in the Chancellery of Credit had the right to withdraw funds from any [fol. 249] of the deposit accounts?

A. Yes.

Q. These same two individuals had the same power over each and every account which the Chancellery of Credit had?

A. Yes, all; as far as I remember, all; there was no exception of the accounts of the Chancellery of Credit.

Q. Do you remember the names of those two people?

A. It was not two people in particular. There may have been at least fifteen; any two of those fifteen. The signatures of those were sent to the banks which were holding those amounts, because they were the people who had something to do with those accounts. They were in charge of those particular accounts. It was a formality. At that time nobody foresaw the possibility of any trouble with respect to those accounts.

Q. Were any of these fifteen people, as far as you know, ever in the United States?

A. Yes, there were several who were in the United States. The first persons who were sent to America in 1915, were myself and a Mr. Pehmeller. After that there were several others who were sent for temporary missions as, for instance, Mr. Gauger, Mr. Borzakowsky.

Q. Did you have the right to act as one of those two individuals entitled to withdraw from the deposit accounts?

A. No, I was never in that particular branch. My name was not on the list. Nor Mr. Serge Ughet's. He was my chief in the United States.

Q. Do you know whether Mr. Boris Bakhmeteff had the [fol. 250] power to withdraw any funds?

A. No, Mr. Bakhmeteff had nothing to do with the Ministry of Finance.

Q. Can you tell just how these withdrawals would be made? In other words, were checks drawn against the several accounts?

A. No, usually all these withdrawals were made by wire or by cable. That was the official procedure and they were afterwards confirmed by letter.

Q. That was true in respect of the Guaranty Trust Company?

A. Yes. Of course, before the War we did not have funds in America, only maybe a few hundreds or thousand dollars, an insignificant amount. Most of our funds were in Berlin and Paris because all those funds were there in order to pay the interest on the Russian loans abroad so that when the time arrived, the Russian Government would not be at the disposal of the exchange in order to be independent and be able to pay all its interest and that is why the majority of funds were kept in Berlin and Paris as we had the largest amount of Russian loans there.

Q. These restrictions under which the deposits were made at the various banks, inclusive of the Guaranty Trust Company, I suppose, were in the form of written communications with the Guaranty Trust Company?

A. Yes, they were in the form of a written communication, a cable to be sent, and after, a letter to follow.

Q. And the same instructions approximately applied to all deposit accounts?

A. Yes.

Q. There was no unusual account, was there?

[fol. 251] A. There were different accounts where we had a "pre-avis" because we had to warn the banks in advance of a big withdrawal.

Q. Did you make it your business to keep more or less in close touch with these accounts in America while you were here?

A. Yes. It was my duty at that time to keep in close touch with all of these accounts.

Q. Did you ever have any communication with the Chancellery of Credit in Russia with respect to these accounts?

A. Yes.

Q. Did you confer or communicate with the Chancellery of Credit in Russia concerning the Guaranty Trust account?

A. Do you mean myself, or my office? Yes, my office communicated on a number of occasions.

Q. What was the general nature of your communications?

A. As far as I remember, it must have been in connection with placing a certain amount of funds or the withdrawal of a certain amount from these accounts.

Q. In other words, if you wanted to withdraw for any purpose a portion of these accounts you would communicate with the Chancellery of Credit for authority?

A. No, it is not exactly like that, because all the accounts which were in the United States in the National City Bank or the Guaranty Trust, they were not put at the disposal of the Russian Embassy, so we had to communicate; they were more or less technicalities because we didn't have the slightest right; because if there were any payments to be made they had to be paid from St. Petersburg. There [fol. 252] was only one account in the National City Bank which was put in the name of Serge Ughet, Russian Financial Attache. That was on account of the Russian Supply Committee, and was put in that name in order to give it diplomatic immunity. Mr. Ughet, in whose name the account was, had not the disposition of this account but got the special permission for each payment from St. Petersburg, Russia.

Q. Who would decide whether any withdrawals would be made from these various accounts, inclusive of the Guaranty Trust Company?

A. It would be the Minister of Finance or one of his assistants in St. Petersburg.

Q. Who would initiate it?

A. It might have been initiated by our office in New York because we were in close touch with the payments which were due on different contracts, then we communicated that and got the authority to make those payments.

Q. Did you have anything to do with the opening of the deposit account with the Guaranty Trust Company in July, 1916?

A. No, it was opened before I arrived in the United States. This account was opened in 1916 in connection with a loan made by a group of banks to the Russian Government.

Q. As you said, you never attempted to exercise any control over the account?

A. No, while I was in New York I had all of those accounts under my supervision. I mean the amounts of these accounts were known to me, all the payments; all were passing through in a routine way through my hands.

[fol. 253] Q. I suppose that the Guaranty Trust Company gave monthly statements of the balances of these accounts?

A. Yes.

Q. Did they send these statements direct to Russia or did they send them to you direct to be forwarded?

A. I can't recall the statements of the Guaranty Trust Company, whether they were sent directly to Russia or maybe a copy to us and the other one to St. Petersburg; but I don't remember from the Guaranty Trust. I know from the National City Bank we got the statements. One of the reasons why I don't recall so well was that since I arrived in New York there were practically no changes in that account and it was not an active account, while the National City account was continuously active.

Q. Do you have any recollection as to why this account was opened with the Guaranty Trust Company.

A. This account was opened in connection with a loan which was made by a group of banks.

Q. Yes, but why should they pick the Guaranty Trust rather than some other bank, and for what purpose?

A. General purpose, yes, but they picked the Guaranty Trust, the National City Bank, Lee Higginson Company, the First National Bank, and J. P. Morgan, because it was the group of banks which loaned us that money, and naturally we left the deposits in these banks.

Q. The selection of the Guaranty Trust was made by the Chancellery of Credit?

A. Yes, by the Chancellery of Credit which inaugurated that loan.

[fol. 254] Q. Did you ever receive any request from the Chancellery of Credit in St. Petersburg to ascertain any facts or information with respect to the account in the Guaranty Trust Company?

A. Not that I recall.

Q. What I am driving at is this. Suppose the Chancellery of Credit in St. Petersburg wanted certain information in New York relative to the account, would they communicate directly with the Guaranty Trust Company?

A. Yes, they communicated directly, but they might also have communicated with us asking us to get the information.

Q. But the general policy was for the Chancellery of Credit to exercise direct control over the accounts.

A. Yes.

Q. They never authorized anyone in the Embassy to withdraw?

A. No, not even Mr. Bakhmeteff had authority to withdraw funds.

Q. Are you aware of any other deposits made with the Guaranty Trust Company in this account other than the twenty-five million dollar deposit?

A. Not that I remember. Maybe there were some other small ones, I have the impression that there were. I think that the Ministry of Railways had an account. I have an impression that this was so.

Q. Have you any recollection as to what the balance was in this deposit account with the Guaranty Trust in December of 1917?

A. Yes, I remember approximately. It must have been $4,976,000. Am I right? I remember it was a little below $5,000,000. Of course, it is quite a long time ago to remem- [fol. 255] ber exactly. But I remember for one particular reason, that I was averse to the policy of our Embassy of using the funds which were in the National City Bank and the Guaranty Trust Company the way they were used.

Q. But that leads into a thoroughly interesting field. I thought you said, I may have misunderstood you, that the Embassy had no control over the funds of the Guaranty Trust and National City Bank?

A. They didn't have any control, but when the Bolshevik Revolution happened, the Embassy got hold of those funds with the approval of the American Government. They asked the National City Bank to change the name of those accounts and the National City Bank agreed and changed the names. That is why I remember because to me it seemed unbelievable. And the Guaranty Trust Company refused to change the name of the account. Mr. Sabin refused to change the names and refused to submit the account to the disposal of Mr. Bakhmeteff. That is why I remember so well this particular case.

Q. I suppose the Guaranty Trust Company took the position that the account was subject to withdrawal by officials

of the Chancellery of Credit and that the Russian Ambassador was never authorized to do so.

A. Naturally, the Guaranty Trust Company stood on a perfectly formal point of view, which was, I believe, the only point of view which a bank should take, but the National City Bank agreed.

Q. I don't know whether you are familiar at all with the [fol. 256] letter written by Mr. Sabin, Chairman of the Board of the Guaranty Trust Company on December 9, 1921, to Mr. Hughes then Secretary of State. It was stated in this letter by Mr. Sabin among other things, that the Russian Ambassador in this country never had any authority to draw on this account and never attempted to exercise any control. I suppose you would say that that would accord with your views?

A. Yes, I think Mr. Sabin made a mistake in saying that the Russian Ambassador never attempted because he attempted on many occasions to get control of those five million dollars which were in the Guaranty Trust Company.

Q. Do you recall the occasions upon which the Russian Ambassador attempted this?

A. Yes, several occasions. One was the occasion in December 1917, maybe January 1918, when Mr. Sabin wrote that letter and refused to submit the account to the control of the Russian Ambassador.

Q. Of course, you don't know what request the Russian Embassy had made of the Guaranty Trust Company?

A. Do you mean, in what shape? Well, I know that it was requested from the Guaranty Trust Company to do the same thing that the National City Bank did, otherwise attempting to change the name of the account, and after that the account would be in the name of a person.

Q. If I may suggest that, that is your conclusion, is it?

A. Well, that is my conclusion also on account of the [fol. 257] letter which was written by Mr. Sabin. The conversations at that time did not take place in my presence. Not the first conversations. This must have been around December 1917 or January 1918 when Mr. Sabin wrote the letter in which he refused to submit the account to the control of the Russian Ambassador.

Q. Do you understand that that request to change the name of the account in the Guaranty Trust was communicated on behalf of the Russian Embassy by Boris Bakhmeteff himself and by Mr. Ughet? By both?

A. Well, as far as I remember, the first request was made by Mr. Ughet.

Q. And that was about when?

A. It was December 1917 or January 1918.

Q. It is your recollection, is it, that the request was made by Mr. Ughet?

A. Yes, By Mr. Ughet, in the form of a personal call when he presented to the Guaranty Trust Company the copy of the letter addressed to the National City Bank, otherwise thinking the idea was that he would argue the Guaranty Trust into doing what the National City Bank did, and that they should do the same.

Q. You apparently have some correspondence or some notations in your papers which lead you to believe that Mr. Ughet did submit those letters to the Guaranty Trust Company?

A. Yes, it is on account of the letter of Mr. Sabin, because Mr. Sabin refers to that. As far as I remember those facts very well because at that time I was very much against it. Otherwise as a matter of routine I might have forgotten. [fol. 258] Q. Did you go with Mr. Bakhmeteff and Mr. Ughet to the Guaranty Trust Company?

A. No. After that I was on several occasions with Mr. Ughet at the Guaranty Trust when he was having conversations with them in order to have the funds released.

Q. At what time did those visits on your part take place?

A. Sometime, I would say, during 1918 or 1919.

Q. Were there a good many visits by you with Mr. Ughet?

A. There were possibly about four or five.

Q. Was there any third person on behalf of the Russian Embassy present?

A. No.

Q. At that time, you were stationed in New York?

A. Yes, in New York.

Q. I suppose you went to the main office of the Guaranty Trust?

A. Yes, at 140 Broadway, New York City.

Q. Did you have your conversations with Mr. Sabin of the Guaranty Trust?

A. Not myself, I didn't talk about that although I remember that once I went there and talked to Mr. Albert Breton and presented again that request on behalf of Mr. Ughet although as I say personally, I was doing that as a matter of discipline because it was the policy of the office

and I didn't express my views to the Guaranty Trust Company.

Q. Would you go so far as to say that it was the policy of Mr. Ughet to have you go along with him when he made these requests of the Guaranty Trust?

A. Yes, in the beginning, but knowing that my view were diametrically opposite he did not take me along again; [fol. 259] although I didn't hinder him he knew I didn't approve of that.

Q. Did I understand that you went with Mr. Ughet to the Guaranty Trust in December 1917 or January 1918?

A. Yes, around that time.

Q. Have you any recollections as to whom you saw at that time?

A. In 1918 we saw Mr. Charles Sabin.

Q. Were you acquainted with Mr. Sabin?

A. I couldn't say whether I met him before socially. I have the impression that I met Mr. Sabin before casually. I never knew him very well.

Q. You were never authorized on behalf of the Russian Embassy to discuss the account of the Guaranty Trust with anyone?

A. No, on one occasion I remember when I had to do that and present that request contrary to my personal opinion. I presented the request, got the negative answer and brought it back.

Q. The request to which you refer is to change the name of the account to follow the practice at the National City Bank?

A. Yes.

Q. Did you go to the National City Bank on the several occasions that Mr. Ughet went?

A. Yes, very often. The National City Bank carried the bulk of our accounts. I used to go very often.

Q. That was quite in line with your duties?

A. Yes, I went practically every day to the National City Bank.

Q. About what time was that?

A. In 1917, 1918 and 1919.

Q. When did you say you came over to this country?

A. I came over in that position in April 1917 to occupy [fol. 260] that particular position as Assistant Financial Attache.

Q. Just for information, can you say whether Mr. Ughet has ever held any other position than Financial Attache?

A. Mr. Ughet, before coming to New York, held a position of Assistant Representative of the Russian Ministry of Finance in London with the Russian Government Committee.

Q. Was he ever, as far as you know, Charge d'Affaires in the United States?

A. He became Charge d'Affaires in the United States at the end of 1918 and he was in that position until about July 1919. It was at the time of the Versailles Treaty when Mr. Bakhmeteff went to Paris.

Q. Insofar as you know, did the United States Government ever attempt to exercise any control over the account in the Guaranty Trust Company?

A. I have a vague recollection, which is rather vague, that at the time when the United States Government sent big funds to save Russia from the famine that the attention of the United States Government was brought to the fact that there were funds belonging to the Russian Government in the Guaranty Trust Company, but whether these recollections that I have, whether it has been taken from the papers or various conversations, I couldn't say.

Q. Did you ever speak to Mr. Polk or anyone connected with the United States State Department concerning the account with the Guaranty Trust?

[fol. 261] A. No, I didn't speak to any one in the State Department about this particular account.

Q. Did you know Mr. Polk who was formerly associated with the American State Department?

A. I couldn't say exactly because I was there several times and I met a certain number of high officials but I couldn't say exactly. I remember meeting in the Treasury Department a gentleman who was Assistant Minister of Finance, his name was Wadsworth. After, I remember meeting Mr. Norman Davis. I don't remember whether he was connected at that time with the State Department but I know that he had an office in New York on Wall Street and I took on two or three occasions the list of the payments we had to make from the National City Bank for his approval because that was the procedure and Mr. Davis approved of those payments.

Q. Did anyone associated with the Guaranty Trust Company ever say anything in your presence to give you the impression that they would be unwilling to surrender the balance of the deposit account in the event that the authorized signatures from the Chancellery of Credit were communicated to them?

A. Well that was even expressed in the letter of Mr. Sabin in the letter which we got in December 1917 or January 1918. Mr. Sabin thought that under the then circumstances in Russia he would be very doubtful whether he could honor the signatures of those two people.

Q. Other than the information which you gained from that letter you couldn't say?

A. I don't remember that much.

[fol. 262] Q. Your answer to the last two questions are wholly predicated on the letter of Mr. Sabin in December 1917 or January 1918?

A. Yes.

Q. You don't know of any demand ever having been made by any members of the Chancellery of the Guaranty Trust Company to pay the funds?

A. No, I don't.

Q. My question, of course, is with respect to this balance of $4,796,000, I was just wondering whether or not the Chancellery of Credit in St. Petersburg had ever made demand or attempted to serve demand for payment of this account.

A. I have no knowledge of facts but while I remember that there were attempts it was more or less to be expected.

Q. During the year- 1918 and 1919 I suppose you would say that you, as well as the officials of the Guaranty Trust were wholly at sea as to what would happen in Russia?

A. Yes, naturally.

Q. I suppose you would be willing to say that the reluctance of the Guaranty Trust to surrender this deposit account to the Russian Embassy was predicated upon their uncertainty concerning developments in Russia.

A. I believe so, that that was one of the reasons.

Q. Do you recollect whether or not any conversations were had between any representatives of the Russian Embassy and the Guaranty Trust Company with respect to meeting the requirement than two officials of the Chancellery of Credit sign the approval or direct the withdrawal of the balance of the four million dollars or any part

thereof? Whether there were any conversations to that effect?

A. Yes.

[fol. 263] Q. Perhaps I am a little indefinite with my question. What I would like to know is this. During 1918 and 1919 it apparently was quite evident to the Guaranty Trust Company and others that no persons were then associated with the Chancellery of Credit in Russia who could draw against this account. Now, what I want to know is whether any discussions were had by members of the staff of the Russian Embassy in the United States with the officials of the Guaranty Trust to meet this situation. In other words, to supply those two names or their equivalent?

A. Not that I remember. Not to my knowledge. Maybe Mr. Ughet had.

Q. I ask that question principally as the result of your having said that one of the reasons for the refusal of the Guaranty Trust Company to pay this account was due to the absence of the proper request for its payment?

A. Well, that was the reason which Mr. Sabin expressed and again in the same letter he said that even with those two signatures he would be reluctant to make a payment.

Q. But, of course, that was more or less of a guess on his part as to what might be done by the bank if those two signatures were presented.

A. Yes, it was not distinctly said that he would refuse to pay.

Dimitry G. Ter-Assatouroff.

Sworn to before me in the City of Montreal, in the Province of Quebec, on the 22nd day of November, 1935. Richard Ford, Consul of the United States of America. (Seal.)

[fol. 264] In United States District Court

[Title omitted]

Affidavit of Boris Brasol

State of New York,
County of New York:

Boris Brasol being duly sworn, deposes and says:

I am a consultant on Russian and foreign law, with an office at 5 Columbus Circle, Borough of Manhattan, City of New York.

I was born in Russia in 1885, and I continuously resided there until the end of May, 1916. In 1903, having graduated at the High School Division of the Imperial Law School at St. Petersburg, I matriculated in the St. Petersburg Imperial University, Department of Law, and graduated in 1908, with a degree of Bachelor of Laws. In the spring of the same year I entered into the service of the St. Petersburg Circuit Court in the capacity of a junior candidate to a judicial office. In 1909, I was admitted at the said Court to my Bar examination, or more precisely, to [fol. 265] that examination, which, if passed, entitled one to hold a judicial office, and having passed same, I was promoted to the rank of senior candidate to a judicial position. Shortly thereafter I was appointed Assistant to the Chief of the Legal Division of the Railroad Construction Department of the Ministry of Ways and Communications, which Division was charged with the duty of prosecuting and defending civil actions instituted by, and brought against, the said Department. While holding this office, I was appointed secretary of the Interdepartmental Committee which was established in conjunction with the Imperial Counsel for the settlement of certain controversies between the Russian Empire and Finland relative to railroad construction matters and the condemnation of lands in Finland. In the Autumn of 1910, I was appointed to the office of prosecuting attorney, or examining magistrate, (Untersuchungerichter or juge d'instruction) in the province of Pskov, Russia, of the St. Petersburg Court of Appeals District, and in February, 1913, in the same capacity, I was transferred to the Fourteenth Precinct of the City of St. Petersburg. In the Spring of the same year, by order of the Minister of Justice, I represented, together with three other officers of the St. Petersburg Courts, the Ministry of Justice at the All Russian Convention of the Chiefs of Police who were summoned for the purpose of redrafting certain provisions governing the functions of the Police Departments which were then within the jurisdiction of the Ministry of the Interior. In January 1914, by order of the Minister of Justice, I was appointed one of the fourteen [fol. 266] members of a Special Committee under his Chairmanship which was established in conjunction with the Ruling Senate, then the highest Court of Appeal, for the purpose of compiling a complete history of the new Court Institutions of November 20, 1864. As a member of the

said Committee I prepared a historical survey of the organization and functions of the Russian prosecuting attornies (juges d'instruction). In the Autumn of 1914, with the outbreak of the European War, I joined the Army, and while serving at the front I was appointed secretary of the Regimental Court of the First Infantry Regiment of the Imperial Guard. In 1915, following my evac-ation from the front, I was appointed military prosecuting attorney of the Fourth Precinct of the St. Petersburg Military District, and later, in the same year,—examining magistrate of the Supreme Investigative Committee under the Imperial Council which, by order of the Emperor, was instituted preparatory to the trial and subsequent conviction of the then Russian Minister of War. Having completed my work there, I was commissioned by the Imperial Government to proceed on a special mission—first to London, and later, in August 1916,—to the United States in connection with the reorganization, which then took place, of the Russian Government Supply Committee in America. Before proceeding abroad I was instructed to familiarize myself in detail with the various enactments pertaining to the Russian wartime financial policies and the methods of allocating foreign exchange for Russia's purchases abroad. In this connection I was appointed: a) Member of the Russian [fol. 267] Government Supply Committee in America; b) Representative of Russia on the Interallied Conference in New York; c) Member of the Anglo-Russian Committee, New York; d) Secretary to the President of the Russian Government Supply Committee in America, and in the latter capacity I was placed in charge of all legal matters which came within the duties of the President of the said Committee. In the Autumn of 1917, following the Soviet Revolution, I resigned all my Russian Government offices and positions, and, on January 1, 1918, I entered into the service of the United States War Trade Board. In 1919, having received an honorable discharge therefrom, I started my work as consultant on Russian law and ever since I have been working in this field. In numerous cases I have testified in the Courts of this State, in the Federal District Courts and also in the United States Court of Claims on matters relating to Russian Civil and Commercial law and the Russian Imperial and Soviet administrative system. In this connection I have been advising and am now acting as Russian Counsel for the Federal Attorney General's

compelled to make use of those governmental organs which having survived the March 1917 revolution, were functioning at the time when the Soviet revolution had taken place. In this connection, it is important to bear in mind that in some of the official Collections of Soviet Decrees and Enactments the legislative acts of both the Imperial and the Provisional Governments are not only casually referred to but even verbatim recited. Thus, on pages 355-357 of the Appendices to the Collection of Decrees and Enactments relative to the Union of Communes of the Northern Region, [fol. 280] which was compiled in the year 1919 by the People's Commissariat of Justice of that region, the Statute on the transfer of hides to the State which, on April 21, 1917, was enacted by the Provisional Government, is reprinted in full. Again, on page 367 in the same collection there appears the complete text of the "Imperially ratified Decision of the Council of Ministers on the Appointment of Government Inspectors for the Supervision of the Work of certain Commercial and Industrial Enterprises" which was enacted on March 16, 1915.

On the grounds above set forth, and on the basis of my knowledge of the Russian law, I come to the conclusion that the statement made by Mr. Karinsky in his affidavit of October 7, 1935, to the effect that there is no succession, whether in Law or in fact, between the Provincial Government and the Soviet Government is incorrect.

Boris Brasol.

Sworn to before me this 25th day of November, 1935.
(Signed) Armand Chankalian, Notary Public, New York Co.

[fol. 281] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF SERGE UGHET

STATE OF NEW YORK,
County of New York,
Southern District of New York, ss:

Serge Ughet being duly sworn, deposes and says:

That he was duly designated and acted in the United States of America as the representative of the Ministry of

Finance in the Russian Supply Committee in New York from January 2, 1917 and in February, 1917 was attached to the Russian Embassy in Washington as Financial Attache. In his dual capacity he was familiar with the financial operations and accounts of his Government in the United States; that deponent between the dates of December 3, 1918 and August 1, 1919, was duly designated and acted as Charge d'Affaires of Russia. That the Imperial Government of Russia in July, 1916, opened on its own behalf a [fol. 282] deposit account in the name of "Section Etrangere, Ministere des Finances" of the Imperial Russian Government with the defendant Guaranty Trust Company of New York by the deposit of $25,000,000 transferred from The National City Bank; that this account was opened in accordance with written instructions from the Ministry of Finance; that such instructions permitted withdrawals from this account only upon the order of and over the signatures of two certain designated officials of the Ministry of Finance stationed in and resident in Petrograd, Russia.

That the supervision of such account was not delegated by his Government to the deponent. That in accordance with the manner of administering the account orders and transactions in connection with it were not known to him. On only one occasion (the transfer of $5,000,000 out of the American Credit to Russia from National City Bank to Guaranty Trust Company of New York in July, 1917) was any transaction in connection with the fund executed by deponent.

That the balance of said account remaining on deposit with the Guaranty Trust Company of New York on December 12, 1917 was $4,976,722.78. That no demand was ever made by deponent on the Guaranty Trust Company for the payment of the balance of $4,976,722.78, or, on information and belief, by any two officials of the Russian Ministry of Finance entitled to withdraw it.

That to deponent's knowledge the only demand which was ever made on the Guaranty Trust Company for the payment of such balance of $4,976,722.78 was made on behalf [fol. 283] of the United States of America after November 16, 1933.

That during the year 1919 deponent was carrying on negotiations with the Guaranty Trust Co. for the use of the aforementioned sum of $4,976,722.78. That in these negotiations, deponent was represented by the late Mr. Murray

Office, and I have also or am still acting in the same capacity for the following law firms: Sullivan & Cromwell; Shearman & Sterling; Cravath, Henderson & de Gersdorff; Coudert Brothers; Zabrisky, Sage, Gray & Todd; Davis Polk Wardwell Gardiner & Reed; Hunt, Hill & Betts; White & Case; Breed, Abbott & Morgan; Hornblower, Garrison & Miller. I am the author of a number of articles and several books on legal subjects, including "The Methods of Legal Investigation" (Petrograd, 1916), and "The Elements of Crime" (Oxford University Press, 1927).

[fol. 268] I have read the affidavit, in the above entitled case, of Nicholas S. Karinsky sworn to on the Seventh day of October, 1935. It appears therefrom that the deponent takes the position that the Soviet Government cannot be recognized as the successor to the Provisional Government which, on November 7, 1917, was overthrown by the Soviet revolutionary forces. Mr. Karinsky seems to base his opinion on the subject, principally upon two factual grounds: a) the fact that none of the senior officers, or Ministers, of the Provisional Government became a member of the Soviet Cabinet which assumed the name of the Soviet of People's Commissars, and b) the fact that the various Ministers of the Provisional Government were liquidated and terminated by the Soviet Government, in law as well as in fact, instead of being taken over by the Soviet authorities.

Neither of these contentions and the conclusion drawn therefrom, in my opinion, are correct.

First. While I do not deny the fact that none of the Ministers of the Provisional Government became a member of the Soviet of People's Commissars, I do maintain, however, that this fact is of no legal significance and is indicative of no legal principle underlying the Soviet administrative system. As a matter of historical record it is important to bear in mind that the Provisional Government which, in March 1917 succeeded the Imperial Government, immediately after the overthrow of the latter, formed a new Cabinet or Council of Ministers, as follows: Prince G. E. Lvoff—President of the Council of Ministers and Minister [fol. 269] of the Interior, P. N. Milukoff—Minister of Foreign Affairs, A. I. Gouchkoff—Minister of War and Navy, N. V. Nekrassoff—Minister of Ways and Communications, A. I. Konovaloff—Minister of Trade and Industry, A. A. Manouiloff—Minister of Public Education, M. I. Teres-

chenko—Minister of Finance, V. N. Lvoff—Attorney General of the Holy Synod, A. I. Shingareff—Minister of Agriculture, A. F. Kerensky—Minister of Justice and I. V. Godneff—State Controller.

The composition of the Council of Ministers of the Provisional Government, as above set forth, was officially promulgated in the Messenger of the Provisional Government, No. 1/43 and No. 2/47 for the year 1917. To my personal knowledge none of the aforesaid eleven Ministers has ever held the office of Minister under the Imperial Government, and none of the members of the Council of Ministers of the Imperial Government has become a member of the Cabinet thus formed by the Provisional Government. However, to the best of my knowledge, on this ground, it has never been maintained or contended by either Russian or foreign lawyers that there is no legal succession between the Imperial Russian Government and the Provisional Russian Government.

Second. In my opinion it is incorrect to contend, as Mr. Karinsky does in his affidavit above referred to, that with the advent of the Soviet Government all the Ministries and Government Departments of the Provisional Government were terminated in fact as well as in law. What actually happened was that on October 28, (November 9, new style) 1917, the Soviet Government, following the usual [fol. 270] practice of revolutionary governments in general, formed a new Cabinet, which, as stated above, assumed the name of the Soviet of People's Commissars. This body created, in addition to the Government Departments of the Interior, Agriculture, War and Navy, Trade and Industry, Public Education, Finance, Foreign Affairs, and Justice all of which functioned both under the Imperial and the Provisional Governments, several new Government Departments including one placed in charge of matters dealing with national minorities affairs. The decree on the establishment of the said Soviet Cabinet or Soviet of People's Commissars was promulgated on October 28, 1917, (old style) in the Gazette of the Provisional Workers' and Peasants' Government. However, thereby the Government Departments and Ministries of the Provisional Government were neither terminated nor abolished, be it in fact or in law. On the contrary, each one of the departments of the Provisional Government was permitted to continue such work as came within its former pre-Soviet

jurisdiction. As a mere illustration of this fact, I shall deal with the Ministry of Finance.

The composition or inner structure of the Ministry of Finance, both under the Imperial Government and the Provisional Government, was determined by statute, viz., sections 463,—618[1] of v. 1, p. 2, Complete Code of Laws of the Russian Empire, in that division of the said Code which deals with the institution of Ministries. Section 465 contains an enumeration of the various Central Government Departments which, in their conjunction, constituted the [fol. 271] Imperial Ministry of Finance. Among the other subdivisions of that Ministry, the Department of State Treasury, the Department of Tax Assessments, and the Credit Chancery are specifically referred to in the said section 465. On the other hand, the composition and functions of the provincial institutions of the Ministry of Finance, such, for instance as the Courts of Eschequer, and the provincial branches of the State Treasury are defined in the Statute on Provincial Institutions, articles, 1001—1121, v. II, Complete Code of Laws of the Russian Empire. Again the Charter of the State Bank and the provisions relative to the Department of the State Savings Banks which were both Government institutions functioning under the immediate control of the Minister of Finance, appear respectively in arts. 1—180 of Division IV, and 1—60 of Division V of the Credit Statute, v. XI, p. 2, Complete Code of Laws of the Russian Empire.

After the overthrow of the Provisional Government, the Soviet Government not only did not abolish the Ministry of Finance but continued to specifically refer to it by name, viz, "Ministry of Finance" in its various decrees and legislative enactments, viz, in the decree on the abolition of the State Nobility and Peasants' Land Bank, promulgated in No. 20 of the Gazette of the Workers' and Peasants' Government of November 28, (December 10, new style) 1917, also reprinted in the official Collection of Enactments and Decrees of the Workers' and Peasants' Government, December 12/25, 1917, No. 4, Sect. 56. Likewise, the term "Ministry of Finance" appears in a decree of the People's Commissar of Finance of March 25, 1918 (new style) rela- [fol. 272] tive to the Library of the employees of the said Ministry. The latter decree appears on page 508 in the official Collection of Decrees and Enactments relative to the Union of Communes of the Northern Region.

Nor is it correct that as important a branch of the Ministry of Finance as the State Bank which was established in 1894 by the Imperial Government and which continued to function under the Provisional Government, had been abolished by the Soviet authorities. On the contrary, when, pursuant to the Soviet decree of December 14/27, 1917, private joint stock commercial banks were nationalized by the Soviet Government, their assets and liabilities, by the express wording of the said enactment, were taken over by the State Bank (Collection of Enactments and Decrees of the Workers' and Peasants' Government, 1917, No. 10, Sect 150, arts. 2, 3, 4 and 5). Likewise, by virtue of the decree of the Soviet of People's Commissars of November 28,—December 10, 1917, above referred to, the liquidation of the business of the State Nobility and Peasants' Land Bank was entrusted to the State Bank. Furthermore, the fact that, not only the Central or Head office of the State Bank in Petrograd, but equally its provincial branches continued to function under the Soviet Government, is corroborated by the provisions of the decree of the Soviet of People's Commissars on the loan of 20,000,000 roubles to the Soviet of the Regional Doumas of the City of Moscow which was promulgated on November 28—December 10, 1917, in issue No. 20 of the Gazette of the Provisional Workers' and Peasants' Government, and later, on December 12/25, 1917, [fol. 273] was reprinted in the Collection of Decrees and Enactments of the Workers' and Peasants' Government, No. 4, Sect. 60. In the said decree the Moscow Branch of the State Bank is specifically referred to by name in articles 1, 2 and 4. Later, in the month of April, 1918, the State Bank was given the name of "People's Bank," but in substance it retained all functions of the former and it continued to operate until January 17, 1920, when it was abolished by decree of the Soviet of People's Commissars (Collection of Enactments & Decrees of the Workers' and Peasants' Government, 1920, No. 4/5, Sect. 25). However, by virtue of a Soviet decree of October 12, 1921, the State Bank was reestablished (Collection of Enactments and Decrees of the Workers' and Peasants' Government, 1921, No. 72, Sec. 594) and it continues to function up to the present time.

With reference to the Department of State Treasury, which likewise formed a part of the Imperial Ministry of Finance and which continued to function under the Provi-

sional Government, the fact should be borne in mind that when the Soviet Government came into power, it did not abolish the said Department. This fact is corroborated by the provisions of the decree of the People's Commissar of Finance of March 24, 1918, by virtue of which all appointments of the Chiefs of the Courts of Exchequer were vested in the said Department at the State Treasury. The decree herein mentioned appears on page 508 of the Collection of Decrees and Enactments relative to the Union of Communes of the Northern Region. Moreover, the State Treasury, as an integral part of the Soviet financial system, [fol. 274] is specifically mentioned in arts. 81, 82, 83, 84, 85 and 88 of the Constitution of the Russian Federative Soviet Republic of July 10, 1918, reference to which is made by Mr. Karinsky on page 4 of his affidavit of October 7, 1935.

Another extremely important institution of the Imperial Ministry of Finance, which survived the March revolution of 1917, as a result of which the Provisional Government was inaugurated, was the Credit Chancery, officially referred to as "The Special Credit Chancery of the Ministry of Finance." The said Credit Chancery was established on January 23, 1819, under the Imperial Regime. One of the subdivisions of the said Credit Chancery of the Ministry of Finance was its "Foreign Section" or *Section Etrangere"* which was also established under the Imperial Government in or about the year 1819. The "Foreign Section," much as the Credit Chancery itself survived the March 1917 revolution, and under the Provisional Government, pursuant to its decree of June 5, 1917 (Collection of Enactments and Decrees of the Provisional Government, 1917, No. 138, Sec. 734) the Credit Chancery was given special authority in connection with the supervision of rouble deposits abroad. Not only did the Soviet Government not abolish the said Credit Chancery, but it conferred upon it further authority in connection with the control over all foreign exchange transactions. On September 19, 1918, the People's Commis-ariat of Finance enacted a decree (Collection of Enactments and Decrees of the Workers' and Peasants' Government, 1918, No. 68, Sec. 738) by virtue of which the Credit Chancery was given special [fol. 275] powers in connection with the authorization of effecting rouble transfers abroad. Furthermore, on October 3, 1918, the Soviet People's Commissariat of Finance enacted a decree "On the Regulations of Transactions in

Foreign Currency and the Exportation of Monies Abroad" (Collection of Enactments and Decrees of the Workers' and Peasants' Government, 1918, No. 72, Sec. 781) pursuant to which the Special Credit Chancery was granted the authority to supervise and control every and each transaction relating to the transfer of roubles to accounts in foreign countries. On this point it is important to remember that the provisions of the said Soviet decree almost verbatim reproduce those of the decree of the Provisional Government of June 5, 1917 above referred to. In fact, art. 1 of the said decree of June 5, 1917, provides:

"Money transfers abroad and deposits of roubles to the accounts of individuals and institutions abroad, or their representatives in Russia, as well as the assumption of any obligations entailing the aforesaid deposits and transfers shall be interdicted unless permission therefor from the Ministry of Finance shall have been granted."

Not only did the Soviet Government retain the said regulation of the Provisional Government, but in its decree of October 3, 1918, it reiterated the said regulation in the following terms:

"*On the strength of the existing regulations* all transactions in foreign currency, deposits of roubles to the accounts of persons and institutions located abroad, or their repre- [fol. 276] sentatives in Russia, as well as the assumption of any obligations entailing such deposits and transfers abroad shall be interdicted unless permission therefor shall have been granted by the Special Credit Chancery of the People's Commissariat of Finance."

In other words, the Soviet Government, with specific reference to the Credit Chancery of the Ministry of Finance, as late as in October 1918, has almost verbatim repeated the provisions of the decree of the Provisional Government of June 5, 1917. Thus, as I have shown, the Credit Chancery which was created in conjunction with the Ministry of Finance under the Imperial Regime and which continued to operate under the regime of the Provisional Government, likewise persisted under the Soviet regime.

The same is true of the provincial Courts of Exchequer. As stated above, these organs of the Ministry of Finance were created under the Imperial Regime and their organi-

zation and functions were defined in arts. 1001-1121, v. II, Complete Code of Laws of the Russian Empire. The provisional Government substantially left the Courts of Exchequer intact. Nor were these abolished by the November 1917 Soviet revolution. As a matter of fact on August 22, 1918, the People's Commissar of Finance issued a Circular in which the financial organs of the Northern Commune were instructed to deal directly with the Courts of Exchequer in that region instead of obligating the said Courts to submit their reports to the Central financial agencies of the Com-[fol. 277] missariat of Finance in Moscow. It appears from this Circular that as late as in August 1918, the Courts of Exchequer were normally functioning under the Soviet System.

The same Circular contains also specific reference to the work of the Department of Tax Assessments which was created under the Imperial Government and is specifically mentioned among the central organs of the Imperial Ministry of Finance in art. 465, v. I, p. 1, Complete Code of Laws of the Russian Empire. The text of the Circular of the People's Commissar of Finance of August 22, 1918, appears on pages 522, 523 of the Collection of Decrees and Enactments relative to the Union of Communes of the Northern Region.

Likewise, the Department of Custom Duties and the Department of Indirect Taxation, both of which were subdivisions of the Imperial Ministry of Finance, (art. 465, v. I, p. 1, Complete Code of Laws of the Russian Empire), were not abolished by the Soviets, but, by virtue of a decree of the Soviet of People's Commissars of June 29, 1918, they were placed under the jurisdiction of the Commissariat of Trade and Industry. This decree appears on page 368 of the Appendices to the Collection of Decrees and Enactments relative to the Union of Communes of the Northern Region.

In concluding my discussion on the different organs of the Ministry of Finance, I may also mention the fact that the Department of State Savings Banks which was established under the Imperial Regime (art. 1-60, Credit Statute, v. XI, p. 2, Div. V, Complete Code of Laws of the Russian [fol. 278] Empire) continued to function under the Soviets, and, a decree of the Soviet of People's Commissars of May 2, 1918, on the strength of which 3,000 new post and telegraph offices were to be established, the Department of the State Savings Banks is specifically referred to. The

said decree has been promulgated in the official Collection of Enactments and Decrees of the Workers' and Peasants' Government (1918, No. 35, Sec. 461). To the best of my knowledge the State Savings Banks continued to operate normally throughout the years 1918, 1919 and the first half of the year 1920. On June 17, 1920, by order of the Liquidation Division of the Central Budget and Accounting Department, they were merged with other cash offices of the Soviet Government; but, on December 26, 1922, the said Savings Banks were restored (Collection of Enactments and Decrees of the Workers' and Peasants' Government, 1923, No. 1, Sect. 13), and, to the best of my understanding, they continue to operate up to the present time.

Thus far I have confined my discussion to the different organs, both Central and Provincial, of the Ministry of Finance, which under the Soviet system assumed the name of the People's Commissariat of Finance. However, it goes without saying that the survival of the pre-Soviet Government Departments under the Soviet system was not limited to the Ministry of Finance. One example will suffice to clarify this point. The organization or inner structure of the Imperial Ministry of War is defined in arts. 839-863, v. I, p. 1, Complete Code of Laws of the Russian Empire. Article 841 gives a complete enumeration of those central [fol. 279] subdivisions which, in their conjunction, constituted the Imperial Ministry of War. Among these central branches was the Chief Military Courts Department. The Provisional Government left this Department intact, while the Soviet Government, without abolishing it, merely curtailed the scope of its work, and by virtue of a Soviet decree of January 20, 1918, the first, second and fifth Divisions thereof were closed. (Collection of Enactments and Decrees of the Workers' and Peasants' Government, 1918, No. 17, Sect. 257.)

Of course, I am not attempting to deny that the Soviet revolution brought about fundamental changes in the structure of the Russian governmental apparatus, and that a number of pre-Soviet both central and local executive organs were either abolished or reorganized by the Soviet authorities. However, it is a mistake, in my opinion, to assert that, as a matter of Russian Law, the entire pre-Soviet administrative system was obliterated and swept into discard by the mere seizure of the State authority by the Soviet revolutionists. The latter, historically, were

of Coudert Brothers, and the Guaranty Trust Co. was represented by Mr. Russell of the firm of Stetson, Jennings & Russell. That deponent was informed by Mr. Murray in June, 1919 that Mr. Russell, counsel for the Guaranty Trust Co., had said that the bank could not safely pay over the sum of $4,976,722.78 on the direction of the Russian Embassy without a judgment of a court of competent jurisdiction. That Guaranty Trust Co. made inquiry of deponent through counsel whether National City Bank would guarantee deponent's signature in the event a check should be drawn by the Guaranty Trust Co. to the order of the Russian Government and deposited to the credit of the Russian Government's account with the endorsement of deponent. That at that time, Mr. Russell suggested to deponent's counsel that Guaranty Trust Co., before it could make payment, would insist that it be indemnified against the possibility of a payment of said sum to any future Russian Government.

That deponent at no time made a demand on the Guaranty Trust Co. for the payment of the balance of $4,976,722.78 and deponent verily believes that no such demand was ever made by anyone on behalf of deponent's government. One basis of deponent's knowledge in support of this belief is to be found in the letter of the defendant dated December [fol. 284] 9, 1921, by Charles H. Sabin as "Chairman of the Board" on behalf of the Guaranty Trust Co. to "Honorable Charles E. Hughes, Secretary of State, Washington, D. C." (among the defendant's moving papers) wherein it was stated: "The Russian Ambassador in this country never had authority to draw on this account and never attempted to exercise any control."

That deponent has read the affidavit of Mr. Ter Assatouroff and believes it is erroneous and has no recollection that he ever conferred with Mr. Sabin or anyone on behalf of the Guaranty Trust Co. in the presence of Mr. Ter-Assatouroff, and further, deponent states on information and belief that he never requested "Guaranty Trust Co. to place at the disposal of the Russian Embassy" the sum of $4,976,722.78. (Assatouroff affidavit dated October 7, 1935, page 5.)

That deponent in 1927 and 1928 conferred with Mr. Doing of the law firm of Coudert Brothers concerning the desirability of making a demand against and instituting an action against Guaranty Trust Company of New York for

the recovery of the aforesaid sum of $4,976,722.78. Since under the arrangements between the Russian Embassy and the United States Government any Russian Government funds undesignated for specific purposes and recovered by the said Embassy had to be applied against the interest due on Russian obligations held by the United States, the deponent conferred with officials of the State Department in Washington in order to ascertain the wishes of the United States Government in respect to instituting an action against [fol. 285] Guaranty Trust Company of New York for the recovery of the aforesaid sum. After several conferences at the State Department, to the knowledge of deponent no definite decision was reached by the State Department officials as to whether a suit then should be brought to recover the aforesaid sum.

S. Ughet.

Subscribed and sworn to before me this 27th day of November, 1935. (Signed) Armand Chankalian, Notary Public, New York Co.

[fol. 286] IN UNITED STATES DISTRICT COURT

[Title omitted]

SECOND AFFIDAVIT OF SERGE UGHET

SOUTHERN DISTRICT OF NEW YORK, ss:

Serge Ughet, being duly sworn, deposes and says:

1. That annexed hereto are true copies of:

(a) Letter dated February 14, 1921 from deponent to Hon. N. Kelley, Assistant Secretary of the United States Treasury Department.

(b) Letter dated March 1, 1921 from N. Kelley to deponent.

(c) Letter dated March 4, 1921 from deponent to N. Kelley.

2. That after the exchange of letters referred to above between deponent and N. Kelley, the deponent in his rela-

tion with the Treasury Department of the United States [fol. 287] and with the State Department of the United States acted in accordance with the understanding expressed in such letters and those departments in their dealings with the deponent acted in accordance with the understanding expressed in such letters.

S. Ughet.

Sworn to before me this 12th day of December, 1935.
(Signed) Armand Chankalian, Notary Public, New York Co.

[fol. 288] EXHIBIT, ANNEXED TO AFFIDAVIT OF SERGE UGHET

Financial Attache to the Russian Embassy

New York, February 14th, 1921.

MY DEAR MR. KELLEY:

After the bolshevist upheaval in Russia, by a special arrangement of Hon. B. A. Bakhmeteff, Ambassador Extraordinary and Plenipotentiary of Russia, and the Department of State and the Treasury Department, a special set of accounts was established with the National City Bank, all the amounts on which were placed under the control of the Russian Ambassador, but payments out of which, in accordance with 4 classes, had to be made only if no objection was made by the Treasury Department against such payments. The main purpose of the establishing of such a procedure was to liquidate, in the measure of possibility, all the outstanding liabilities of Russia in the United States, in accordance with the list of contracts submitted to the United States Government at that time.

With reference to this arrangement between the Russian Ambassador and the Federal Government and to the letter addressed to Hon. R. C. Leffingwell by the Russian Ambassador on December 27th, 1917, as well as to my letter of December 29th, File No. 3733, I beg to inform you that now the liquidation of the outstanding liabilities of Russia in regard to the contracts placed in the United States is practically finished, and in view of the above, it seems to me, it [fol. 289] is opportune now to close the so-called "Liquidation Accounts" with the National City Bank, which, by my arrangement with you of last year, were merged into one

account "C", the balance of which up to date is of $21,846.70.

In case of the consent of the Treasury Department to close the above mentioned Account "C", and in accordance with the understanding established in the Fall of 1917, I propose that the balance of said Account "C" would be applied to a partial redemption of the Russian indebtedness on account of the interest due on the Russian obligations held by the United States.

Besides the Account "C", there will temporarily remain several accounts with the National City Bank, a list of which is herewith attached, guaranteeing the transfer and savings operations of the Russian Consuls in the United States, which accounts represent the credit balances of the account "Section Etrangere du Ministere des Finances No. 2", which was a part of the accounts set aside for specific purposes. As you are aware, the intention of the Russian Embassy is to establish a certain Trust Fund for the benefit of those people, whose money, having been transferred to Russia, did not reach its destination, thanks to the bolshevist upheaval.

For the future I propose to establish the following procedure.

In case any part of the Russian inventory now on hand in the United States, a list of which will be forwarded to you shortly, which previously was under the ruling of the liquidation arrangement of the Fall of 1917, would be disposed of, [fol. 290] then the amount received will have to be applied by us to the redemption of the interest on account of the American credit.

If the amount received will be less than $10,000, then we shall accumulate the amounts until the sum will reach ten or more thousand dollars, and then shall forward our check to the Treasury Department. To the same "accumulating fund" will have to be added the interest on the "Account C", up to the date of its closing, if you will agree to this, as well as the interest on the accounts guaranteeing the transfer and savings operations, up to the time when the balances of these accounts will be turned over to some Trust Fund.

If this proposal of mine meets with your approval I shall be extremely obliged to you if you will kindly let me know accordingly, and then I shall not fail to send you at once

the check in the amount of the balance of the Account "C" on the date of its closing.

I am, my dear, Mr. Kelley,

Yours very truly, S. Ughet, Russian Financial Attache.

Hon. N. Kelley, Assistant Secretary, U. S. Treasury Depart, Washington, D. C.

SU:LM.

[fol. 291] Balances

Under Accounts Guaranteeing Transfer and Savings Operations of the Russian Consulates in the U. S. A.

As of January 31, 1921

Account	"O #1" (New York)	$24,322.18
"	"P #1" (Chicago)	56,724.80
"	"P #2" "	74,195.05
"	"R #1" (Pittsburgh)	43,493.73
"	"R #2" "	312.55
"	"S #1" (San Francisco)	4,814.72
"	"S #2" "	1,679.53
	Total	$205,542.56

Exhibit, Annexed to Affidavit of Serge Ughet

March 1, 1921.

DEAR MR. UGHET:

Your letter of February 14, 1921, (No. 413) has been received. I note that the liquidation of the outstanding liabilities of the Provisional Government of Russia in regard to contracts placed in the United States has been completed, and that there is a balance of $21,846.70 with the National City Bank of New York in the Russian account from which payments are made only in the absence of objection on the [fol. 292] part of the United States Treasury. The Treasury does not object to the closing out of the account on the understanding that the above-mentioned balance is to be applied on account of interest due on Russian obligations held by the United States, and on the further understanding that, in accordance with the procedure mentioned in your letter, if further sums are received by the Russian represent-

atives in this country which would, prior to the closing out of the above-mentioned account have been payable into that account, they shall likewise be applied on interest due on the above-mentioned obligations. It is understood also that of the sum of $205,542.56 mentioned in the statement enclosed with your letter, any balance not required for the purpose for which said fund was originally set aside shall likewise be applied upon such interest. Please pay the above-mentioned sum of $21,846.70 and such further sums as may hereafter be collected or as may remain from the fund of $205,542.56 to the Federal Reserve Bank of New York by check drawn to the order of "Federal Reserve Bank of New York for credit of the General Account of the Treasury of the United States."

I am, my Dear Mr. Ughet,

Very truly yours, (Signed) E. Kelley.

S. Ughet, Esq., Russian Financial Attache, 404 Fourth Avenue, New York, N. Y.

EK:MO

[fol. 293] Exhibit, Annexed to Affidavit of Serge Ughet

Financial Attache to the Russian Embassy
404 Fourth Avenue

New York, March 4th, 1921.

My Dear Mr. Kelley:

I beg to acknowledge receipt of your letter dated March 1st in which a reply is made to my letter of February 14th, File 413.

From your reply I see that you do not object to the closing out of the Liquidation Account with the National City Bank on the understanding that the balance of said account is to be applied on account of interest due on Russian Obligations held by the United States, and on the further understanding that in accordance with the procedure mentioned in my letter if further sums are received by us, which would, prior to the closing out of the above-mentioned account have been payable into that account, they shall likewise be applied on interest due on the above-mentioned obligations.

It is understood also that of the sum of $205,542.56 mentioned in the statement enclosed with my letter, any balance not required for the purpose for which said fund was originally set aside, shall likewise be applied upon such interest.

In accordance with the above understanding I beg to inform you that today I have forwarded my check for $70,426.34 to the Federal Reserve Bank of New York, drawn to the order of "Federal Reserve Bank of New York for [fol. 294] Credit of the General Account of the Treasurer of the United States", which amount constitutes the balance of Account "C" on today's date (March 4th, 1921).

About the closing of the Account "C" I am notifying simultaneously the National City Bank of New York.

In the way to complete our full accounting to the Treasury I beg to send herewith enclosed the Schedule of all expenditures made from December 15th, 1920 up to March 4th, 1921, as well as Statement of Receipts from December 1, 1920 to March 4th, 1921.

Yours very truly, S. Ughet, Russian Financial Attache.

Hon. N. Kelley, Assistant Secretary, U. S. Treasury Department, Washington, D. C.

Enclosure.
SU/D.

[fol. 295] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF HENRY MUNROE

STATE OF NEW YORK,
County of New York,
Southern District of New York, ss:

Henry Munroe, being duly sworn, deposes and says that from March 30, 1934 to October 31, 1935, he was an attorney in the office of the General Counsel, Treasury Department, United States Government, and that since November 1, 1935 has been a Special Attorney in the Department of Justice, United States Government. In connection with his duties in these positions, he has had frequent conferences with the Division of Eastern European affairs, De-

partment of State, United States Government in reference to the above action. During one of these conferences, he saw in the Department of State the original of a letter from Frank L. Polk to DeWitt C. Poole, Jr., dated December 9, 1921, a copy of which is annexed hereto. This letter is on the letterhead of Stetson, Jennings & Russell, attorneys and counsellors at law, Mills Building, 15 Broad Street, New York.

[fol. 296] Deponent has been informed and believes that the firm of Stetson, Jennings & Russell was in December, 1921 acting as counsel for Guaranty Trust Company of New York, in reference to a deposit of the Russian Government on its books, and that this firm is the predecessor of the firm of Davis, Polk, Wardwell, Gardiner & Reed, which firm is acting as counsel for Guaranty Trust Company, in the above action.

Deponent has been informed and believes that DeWitt C. Poole, Jr. was in December, 1921, head of the division in the Department of State, United States Government styled "Division of Russian Affairs," which division is the predecessor of the division now styled "Division of Eastern European Affairs."

On January 16, 1936, deponent read over the telephone the text of the letter, of which a copy is attached hereto, to the Division of Eastern European Affairs, Department of State, and asked this division to verify whether the text read over the telephone corresponded with the text of the original letter, described above, which is contained in the files of the Department of State.

Deponent was informed over the telephone on January 16, 1936 that the letter, of which a copy is attached hereto, is a copy of a letter in the files of the Department of State.

Henry Munroe.

Sworn to before me this 16 day of January, 1936. (Signed) Leo Cohen, Notary Public. N. Y. Co. Clk's. No. 426, Reg. No. 6C606. Commission expires March 30, 1936.

[fol. 297] Copy MS/SS
Comp. ——.
HM:gd

Stetson, Jennings & Russell,

Attorneys and Counsellors at Law,

Mills Building, 15 Broad St.,

New York

December 7, 1921.

DeWitt C. Poole, Jr., Esq., Department of State, Washington, D. C.

My Dear Mr. Poole:

In a letter signed by the Secretary of State dated December 2, addressed to the Guaranty Trust Company, information was asked in regard to a deposit of $5,000,000 in favor of the Russian Government or some organ of the Russian Government. The letter was answered by Mr. Booth, one of the Vice-Presidents, who said that I would give the information. This is a matter that really should be handled by the Chairman of the Board of Directors or the President, in view of the fact that the letter was addressed to the Trust Company, and confidentially Mr. Sabin and Mr. Potter, those two officers, regretted that Mr. Booth did not refer the matter to them. They are answering the letter fully, and you will receive a letter in a day or two. I write this merely as an explanation of the rather cautious letter written by Mr. Booth.

For your own information, this particular fund, as I [fol. 298] understand, represented a deposit by the Russian Imperial Treasury. The ambassador here never had any authority over it, nor did any of the officials in the United States so there is no one clothed with authority to dispose of this fund. The matter was carefully considered by Wardwell and myself as we were anxious if possible to secure some of this money for Russian relief, but we came to the conclusion regretfully that even if the Trust Company did not have a lien on the funds for their money taken over by the Russian Soviets, the Company would not be protected in paying out any of these funds on the order of any Russian official. However, all the information that you require will be given in the letter that the Secretary will receive tomorrow or the next day.

By-the-way, I hope that the Chinese are not going to so irritate all hands by their demands that the result will be

that the Japanese will get more than they are entitled to in Manchuria. I am not prepared to admit that they are entitled to very much.

Yours sincerely, Frank L. Polk.

[fol. 299] PLAINTIFF'S EXHIBIT 1

Ambassade de Russie, Washington, D. C.

Le 7 Avril 1917.

Monsieur le Secrétaire d' Etat,

J' ai l' Honneur d' informer Votre Excellence que Mr Serge Ughet, fonctionnaire du Ministère des Finances, a été nommé Attaché Financier à l' Ambassade de Russie, en remplacement de Mr. Grégoire Wilenkin.

Veuillez Agréer, Monsieur le Secrétaire d' Etat, l' assurance de ma haute considération.

(Signed) G. Bakhmeteff.

S. E. Mr. Robert Lansing, Secrétaire d' Etat.

April 14, 1917.

EXCELLENCY:

I have the honor to acknowledge the receipt of your note of the 7th instant and to advise you that the information contained therein, that Mr. Serge Ughet, of the Russian Ministry of Finance, has been appointed Financial Attaché to your Embassy, vice Mr. Grégoire Wilenkin, has been noted in this Department and communicated to the Treasury Department.

Accept, Excellency, the renewed assurances of my highest consideration.

Robert Lansing.

His Excellency, Mr. George Bakhméteff, Ambassador of Russia.

701.6/11/163
7 WES
Alvey A. Adee.

[fol. 300] PLAINTIFF'S EXHIBIT 2

To All Whom These Present- Shall Come, Greeting:

Know ye that I, Frank L. Polk, Acting Secretary of State of the United States of America, do hereby certify that Boris Bakhmeteff presented his letter of credence to the President of the United States and was officially received by the President as Ambassador Extraordinary and Plenipotentiary of Russia on the fifth day of July, 1917; that the said Boris Bakhmeteff has accordingly since that date been recognized by the Department of State as Ambassador of Russia; that on the third day of December, 1918, the said Boris Bakhmeteff officially informed the Department of State that he was proceeding temporarily to France and was that day turning over the affairs of the Embassy to Mr. Serge Ughet, Financial Attaché of the Russian Embassy, who would act as Chargé d' Affaires during his absence; that since the third day of December, 1918, the said Serge Ughet has been recognized by the Department of State as Chargé d' Affaires ad interim, of Russia.

In Witness Whereof I have hereunto subscribed my name and caused the Seal of the Department of State to be affixed.

Done in the City of Washington this second day of January, one thousand nine hundred and nineteen.

Frank L. Polk. (Seal of Dept. of State.)

[fol. 301] PLAINTIFF'S EXHIBIT 3

[Photostatic copy of Decree No. 63 of the People's Commissar for Foreign Affairs in Russian Language omitted from Record.]

Source: Collection of Laws and Orders of the Workers' and Peasants' Government, December 12, 1917, No. 4, Part One, Page 59, Moscow.

(Translation)

Order of the Commissar for Foreign Affairs

63. Regarding the dismissal of ambassadors, ministers and members of missions.

In view of the non-receipt of answers to the telegrams and radiotelegrams sent to ambassadors, ministers, members of missions et cetera of the Russian Republic requesting an immediate reply with respect to consenting to work under the direction of the Soviet power on the basis of the platform of the Second All-Russian Congress, they are dismissed from their posts without right to pensions and to perform any State duties whatsoever. Likewise, they are deprived as of this day of the right to make any payments whatsoever from State funds.

Envoy Extraordinary and Minister Plenipotentiary in England—Constantine Dmitrievich Nabokov.

Ambassador in Japan—Vasili Nikolaevich Krupenski.

[fol. 302] Ambassador in the United States of North America—Georgi Petrovich Bakhmeteff.

Ambassador in Italy—Mikhail Nikolaevich Giers.

Minister in China—Former Prince Nikolai Aleksandrovich Kudashev.

Ambassador in Spain—Anatoli Vasilevich Neklyudov.

Counselor of Embassy in France—Nikolai Aleksandrovich Bazili.

Consul General in Paris—Sergei Vladimirovich Zarin.

Minister in Sweden—Constantine Nikolaevich Gulkevich.

Chargé d'Affaires in France—Matvei Markovich Sevastopulo.

Chargé d' Affaires in Holland—Genrikh Genrikhovich Bach.

Chargé d' Affaires in Switzerland—Andrei Mikhailovich Onou.

Consul General in London—Alexander Mikhailovich Onou.

Counselor of Embassy in Washington—Constantine Mikhailovich Onou.

Envoy Extraordinary and Minister Plenipotentiary in Belguim—Dmitri Aleksandrovich Nelidov.

Minister in Portugal—Nikolai Sevastyanovich Etter.

Envoy Extraordinary and Minister Plenipotentiary to the United States of Brazil and to the Republics of Uruguay, Paraguay, and Chili—Alexander Ippolitovich Shcherbatski.

Minister to the Argentine Republic—Evgeni Federovich Stein.

[fol. 303] Minister to Egypt—Aleksei Aleksandrovich Smirnov.

Minister to Rumania—Stanislav Alfonsovich Paklevski-Kozell.

Consul in Canada—Sergei Aleksandrovich Likhachev.
Minister in Siam—Former Count Iosif Grigorevich Loris-Melikov.
Consul General in Korea—Yakov Yakovlevich Lyutsh.
Consul General in Barcelona—Former Prince Alexander Aleksandrovich Gagarin.
Minister in Greece—Ilim Pavlovich Demidov.
Counselor at the Embassy in Athens—Vasili Nikolaevich Strandman.
Consul General in Rome—Georgi Paramonovich Zabello.
First Secretary of the Embassy in Paris—Vladimir Mikhailovich Gorlov.
People's Commissar for Foreign Affairs—L. Trotski.

November 26, 1917.

Published in No. 20 of the Gazette of the Provisional Workers' and Peasants' Government of November 28, 1917.

[Translator's Note:] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

(Signed) Ignatius Jawney, Principal Translator, Department of State. Appointed Translator January 1928.

[fol. 304] PLAINTIFF'S EXHIBIT 4

Telegram Received

Green & Plain

From Petrograd, Dated Dec. 4, 1917. Recd. 6th, 10.55 a. m.

Secretary of State, Washington, D. C.

2066, December 4, 9 p. m.

Your 1875, December 1, 3 p. m., received today. Have made no replies to communications designated.

No advice received from Paris but French Embassy informs me through Naval Attache of the receipt of wireless message stating that joint instructions would be sent to all Allied Missions here and added: "In accord with Japan", which I understand.

Petrograd papers today contain following:

"From New York and Washington the correspondents of the United States telegraph that the American Government

intends to hold a policy of patience with regard to the present situation in Russia striving to prove its faith in the final triumph of good sense of the democracy. According to some rumors even in the case Russia concludes an armistice the United States are prepared to recognize that which the [fol. 305] whole Russian and people recognize. In view of this it is possible that if it should be decided in the military conference in Paris to send so-called threatening communiques to Russia the American delegates will not sign them.

The position of the Washington Government is founded on the assumption that a large part of Russia does not sympathize with the aims of the Bolshevik's and more than that, their success is by no means assured. Concerning the sending of ships and munitions and other merchandise to Russia, the United States will be governed to a considerable degree by the indications of the Russian Ambassador Bakhmeteff who has already stated that he does not recognize the Government of the Bolshevik's''.

Trotsky issued an order three days ago removing all diplomats averse Soviet Government.

Francis.

[fol. 306] PLAINTIFF'S EXHIBIT 5

Telegram Received

RS.

From Petrograd. Dated June 5, 1918. Recd. 7, 3:16 a. m. Secretary of State, Washington D. C.

1, June 5, 5 p. m.

Following just received via Vologda, addressed American Ambassador: "Russian Government nominates as plenipotentiary representative in Washington Citizen Litvinov now same in Paris. Hopes friendship your Government, will not object, our purpose closer relations, intimate friendship between our peoples. Commissary Foreign Affairs, Chicherin." See my telegram of June 5, 6 p. m.

Francis.

[fol. 307] PLAINTIFF'S EXHIBIT 6

Russian Socialist Federal Soviet Republic

People's Commissariat for Foreign Affairs

Bureau of the Representative in the United States of North America

March 18th 1919.

No. 1/a

Temporary Office: New York, 299 Broadway, Room 1812

Residence: 33 Oakden Avenue, Teaneck, Hackensack, N. J.

Honorable Robert Lansing, Secretary of State, Washington, D. C.

SIR:

I have the honor to hand you herewith original credentials of my appointment as representative of the Russian Socialist Federal Soviet Republic in the United States of North America, together with an English translation of the same. [fol. 308] I also have the honor to submit a Memorandum of the present political and economic conditions of Soviet Russia based upon information supplied to me by my Government, and, furthermore, I enclose a translation of the Constitution of the Russian Socialist Federal Soviet Republic.

Holding myself entirely at the disposal of the United States Government for any additional information or for any conference, official or unofficial,

I am, Sir,

Very respectfully yours,

L. Martens, Representative of the Russian Socialist Federal Soviet Republic in the United States of North America. S. Nuortava, Secretary of the Bureau. Translation.

Russian Socialist Federal Soviet Republic

People's Commissariat for Foreign Affairs

Bureau of the People's Commissar

January 2nd, 1919.

No. 9/k

Moskow, Corner of Spiridonowka and Patriarch Lane, No. 30/1

Telephone No. 4-22-96

[fol. 309] Be it known that the Russian citizen Ludwig Christian Alexander Carlovitch Martens, now living in the United States of North America, is hereby appointed Representative of the People's Commissariat for Foreign Affairs in the United States of North America.

People's Commissar for Foreign Affairs George Chicherin. Secretary of the Bureau F. Shenkin. (Seal of the Commissariat "People's Commissariat of Foreign Affairs.")

[fol. 310] PLAINTIFF'S EXHIBIT 7

Russian Embassy, Washington

June 7, 1922.

MY DEAR MR. SECRETARY:

I have the honor to forward for your information copy of a document by which I vest in Mr. S. A. Ughet, Russian Financial Attache, the custodianship and the handling of the properties of the Russian Government in this country for which I have been responsible.

I am enclosing also a copy of my letter to Coudert Brothers, Counselors at Law, 2 Rector Street, New York, concerning the legal protection of Russian rights.

I am, my dear Mr. Secretary,

Yours very sincerely, B. Bakhmeteff.

The Honorable Charles Evans Hughes, Department of State, Washington.

Enclosures.

Know all men by these presents: That I, Boris Bakh-
[fol. 311] meteff, Ambassador Extraordinary and Plenipotentiary of Russia, do hereby for and in behalf of Russia,

appoint Serge Ughet, Custodian of all its property in the United States, both real and personal, including claims and choses in action of every kind and description, giving and granting him power to reduce such property to possession; to commence suits in the name of Russia whenever in his opinion necessary; to sell all or any part of such property whenever in his opinion it may be necessary or advisable so to do, and to enter into such contracts as he may deem necessary for the care and protection of such property.

And for and in behalf of Russia I do further authorize and empower him to receive and to receipt for any and all property of Russia and to care for same; to arrange for transportation of any and all Russian property, and to settle claims which may exist in favor of as well as those which have been or may be made against Russia.

And for and in behalf of Russia I do further authorize and empower him to employ such assistants as may be necessary in the transaction of his duties hereunder; to incur and to pay all necessary expenses, and to appoint an attorney to act in his place in the event of his disability or absence.

And for and in behalf of Russia, I do further authorize and empower him to do anything and everything which may be necessary, advisable or required in the execution of the powers hereinabove set forth.

[fol. 312] In Witness Whereof, I have hereunto signed my name and caused the seal of the Russian Embassy to be affixed this 7th day of June, 1922.

(Signed) Boris A. Bakhmeteff, Ambassador E. and P. of Russia.

June 7, 1922.

Coudert Brothers, Counsellors at Law, 2 Rector Street, New York City.

Dear Sirs:

I send you herewith copy of my letter of April 28, 1922 to the Secretary of State of the United States of America and copy of his answer of April 29.

It is my desire that you should continue to act for Russia in the future as you have in the past and that you should commence such legal suits and take such legal measures as may be necessary for the preservation and protection of her rights.

Mr. Ughet will continue as Financial Attache and act as Custodian of all Russian National property. Kindly assist him as heretofore and consult with him in regard to such legal measures as you think may be necessary or advisable.

If at any time Russia should be without any representative, kindly accept this letter as your authority to commence suits and to take such legal measures as to you may seem necessary or advisable for the preservation and protection of Russian National rights and interests.

Very truly yours, (Signed) B. Bakhmeteff, Ambassador E. and P. of Russia.

Enclosures.

[fol. 313] June 9, 1922.

MY DEAR MR. AMBASSADOR:

I am directed by the Secretary to acknowledge the receipt of your note of June 7, 1922, enclosing for the information of the Department copies of a Power of Attorney to Mr. Serge Ughet and of a letter which you have addressed to Coudert Brothers.

I am, my dear Mr. Bakhmeteff,

Very sincerely yours, D. C. Poole.

His Excellency, Mr. Boris Bakhmeteff, Ambassador of Russia.

DCP:LSS
R.
Noted Alvey A. Adee, June 9, 1922.

[fol. 314] PLAINTIFF'S EXHIBIT 8

S. Ughet, Russian Financial Attaché,
17 East 45th Street

New York, October 21, 1933.

DEAR MR. KELLEY:

The correspondence between the President of the United States and Mr. Kalinin, President of the All Union Central Executive Committee, leads me to believe that conditions may arise in the near future, where no further useful purpose can be served by my continuing to exercise the duties

with which I was vested under the exchange of notes between the Russian Ambassador and the Secretary of State of April 28 and 29, 1922.

In consequence of this belief, may I not request that my present status be discontinued at the earliest convenience of the Department of State. As to certain matters of a continuing character requiring further attention, I would respectfully suggest that after the date of the discontinuance of my status they be considered as being temporarily taken under the care of the United States Government.

In terminating my official activities, I deem it a paramount duty to express my deep appreciation for the unfailing consideration with which I have been treated at the Department of State. Permit me also to say that if a moral satisfaction has been derived by me during the trying years of my service, it has been due mainly to the cognizance that I have enjoyed the confidence of the Government of the United States.

Very sincerely yours, (Signed) S. Ughet, Russian Financial Attache.

[fol. 315] Hon. Robert F. Kelley, Chief, Division of Eastern European Affairs, Department of State, Washington, D. C.

November 16, 1933.

My Dear Mr. Ughet:

I desire to refer to your letter of October 21, 1933, in which you expressed the belief that conditions would arise in the near future when no further useful purpose would be served by your continuing to exercise the duties with which you were charged under the exchange of notes between the Russian Ambassador and the Secretary of State of April 28—29, 1922, and requested that your present status be discontinued at the earliest convenience of the Department of State.

In view of the recognition of the Union of Soviet Socialist Republics by the Government of the United States, I have to inform you that upon this date the Government of the United States ceases to recognize you as Russian Financial Attaché.

The Department is deeply appreciative of the able manner in which you have discharged the duties which devolved upon you under the exchange of notes referred to

above and of the friendly spirit with which you have for so many years cooperated with this Government.

I should like to take the occasion to extend to you personally my cordial good wishes for your future happiness and success.

Very sincerely yours, William Phillips, Acting Secretary of State.

Mr. Serge Ughet, 17 East Forty-fifth Street, New York City.

RFK:EBS.
EE.

[fol. 316] PLAINTIFF'S EXHIBIT 9

January 29, 1918.

Personal

DEAR CHARLIE:

I must apologize for writing you in a personal way about a more or less government matter, but what I would like to have for obvious reasons is a statement as to how the funds that you now have on deposit for the Russian accounts came into your possession, and what the instructions were. If you have any objection to giving this information, do not hesitate to say so. I would like this information, as it may be of assistance in cleaning up some of our Russian difficulties.

Yours sincerely, —— ——.

Charles H. Sabin, Esquire, Guaranty Trust Company, 140 Broadway, New York City.

[fol. 317] (Letterhead of Guaranty Trust Company of New York)

January 31st, 1918.

Honorable Frank L. Polk, Counsellor for the State Department, Washington, D. C.

DEAR FRANK:

I beg to acknowledge the receipt of your letter of the 19th instant. The account which this company has with the Russian Government was originally opened in July, 1916, by the deposit with us by the National City Bank of $25,000,000.

This was done in accordance with instructions from Section Estrangere, Ministere des Finances of the Russian Government, and we received directions from Petrograd to credit this amount to the Section Estrangere, payments to be made only upon the order of two of certain designated officials of the Ministere des Finances.

There is a balance of $4,984,902.73 now standing to the credit of the Ministere des Finances, Section Estrangere.

It was customary for us to honor cabled instructions with test word from the Ministere des Finances directing payments out of this account. In each instance, these cabled instructions were confirmed by proper written orders. I enclose copy of letter which I wrote to Mr. Ughet, Russian Financial Attache, dated December 12, 1917, copy of which I forwarded to you on that date.

[fol. 318] We have never been authorized to honor checks drawn on this account by Russian officials in this country.

I want you to realize that, far from having any objection to giving you information of this character, we are only too glad to be of any assistance whatever in matters of this kind.

Sincerely yours, (Signed) Charles H. Sabin, Pr.

CHS/H.

Copy

December 12, 1917.

Mr. H. Ughet, Russian Financial Attache, Flatiron Building, New York City.

Dear Sir:

We beg to refer to a copy of a letter which you have left with us dated November 28, 1917, addressed to The National City Bank of New York by His Excellency the Ambassador of the Provisional Government of Russia, in respect to the disposition of all moneys now standing at his disposal and all moneys which he may hereafter deposit.

There are no moneys deposited with this Company standing at the disposal of His Excellency. Of course, any money [fol. 319] which His Excellency may hereafter deposit with us will be subject to his instructions, or those of his duly constituted successor.

We have, however, an account, in which there is a balance of $4,976,722.78, standing to the credit of the Ministry

of Finance, Section Etrangere. This was opened in July, 1916, and moneys in this account may be paid out only upon the signatures of two of certain designated officials of the Ministry of Finance.

It has been customary for us to honor cable instructions directing payments out of this account, which cable instructions have in each case been confirmed by proper written orders. Under present conditions, we do not see how we can honor such cable instructions, nor do we see how we could honor written orders signed by the persons previously designated to draw on this account, without the assurance of our Government that such persons still have authority to act. Nor have we any authority for the transfer of these funds.

We must, therefore, for the present continue to hold these funds to the credit of such account.

Very truly yours, —— ——, President.

CHS:L.

[fol. 320] February 4, 1918.

Dear Charlie:

Very many thanks for your letter of the 31st with the very detailed information in regard to your account with the Russian Government.

Thanking you ever so much for your cordial assistance.

Yours sincerely, —— ——.

Charles H. Sabin, Esquire, Guaranty Trust Company, 140 Broadway, New York City.

[fol. 321] Plaintiff's Exhibit 10

Russian Embassy, Washington

April 9, 1918.

My Dear Mr. Polk:

At the time when during November last, funds belonging to the Russian Government were distributed for payments on different liabilities, it was considered proper to appropriate means for payment of interest on different credit operations of the Russian Government with private banking institutions approximately until June 1st, 1918.

It appears at present necessary to foresee later payments. An attached statement specifies in detail payments of interest and other current liabilities in between June 1st, 1918 and January 1st, 1919, the payments during such period totaling $3.276.718.76. Including payments due early in January 1919 the total is brought to $5,276,718.76.

As funds, at present at my disposal, are not in any way adequate to meet payments of such magnitude it is necessary to provide for other sources. In regard to this I wish to bring to your attention the account of the "Section Etrangère Ministère des Finances" with the Guaranty Trust Company of New York. This account, amounting at present to nearly five million dollars, was established in July, 1916 and has been upheld since by deposits from proceeds of different credit operations of the Russian Government in this country. The account has been in direct charge [fol. 322] of the "Foreign Department of the Russian Ministry of Finance", disbursements being effected on orders coming directly from Petrograd.

I have been given to understand that the Guaranty Trust Company would be willing to release the funds on this account provided the Company were to receive certain assurances from the Department of State, protecting such action of the Company from interference by a future lawful Government of Russia.

With regard to the above, I venture to recall that the "Section Etrangère Ministère des Finances" is the foreign operative department of the Chancery of Credit, which is in direct charge of questions pertaining to credit operations in foreign countries. It has been the special duty of this department to attend to payments of interest on foreign loans and to execute such payments. Under normal conditions there could be no doubt as to the absolute necessity of meeting payments of interest on time and in particular to the use, for such purpose, of funds on the accounts of the "Foreign Department."

Referring to the present case it is hardly possible to perceive how any future Government, recognized as lawful, could controvert the obvious legality of paying interest on direct and undisputable liabilities of its lawful predecessor to private citizens or corporations of a friendly country. The very fact of the recognition of the Government as lawful seems necessarily to imply the consideration by such Government of the validity of similar obligations.

It seems, therefore, inconceivable that the use of funds deposited to the accounts of the Foreign Department of the [fol. 323] Ministry of Finance of Russia for the former Russian Government for payment of interest on loans raised by the same Government could raise objections from any future recognized Government of Russia. For this reason it is highly improbable that complications of any character could arise from the fact of the United States Government giving the necessary assurance to the Guaranty Trust Company.

On the other hand, in case the Guaranty Trust Company's funds were released, I would undertake to have the whole amount assigned to the special purpose of meeting current payments on financial liabilities resulting from credit operations of the Russian Government in this country, removing through such assignment any possible doubts which may arise as to the justification of disposing the funds for general purposes.

Hoping that, after giving these questions consideration, you will find it possible to have the funds released and thus have assured the proper payment of interest to the holders of Russian securities in this country, I remain, my dear Mr. Polk, with highest personal regards

Yours sincerely, B. Bakhmeteff.

Honourable Frank L. Polk, Department of State.

Enclosure.

Payments of interest and other current liabilities on credit operations of the Russian Government due between [fol. 324] June the 1st. 1918 and January the 1st, 1919.

1.	25 million—5½% bonds.		
	a/ Interest due from June 1st, 1918	$687.500	
	Commission N. C. B. of New York ⅛% of the value of the coupons		859.38
	b/ Ditto	$687.500	
	December 1st, 1918.		859.38
2.	11 million 5% Treasury notes.		
	a/ Interest due November 1, 1918	$275.000	

3.	50 million credit.	
a/	Interest 6½% due July 10, 1918	$1.625.000.00
b/	Commission N. C. B. of New York ¼% of the value of the operation	
	July 10, 1918	125.000.00
	October 10, 1918	125.000.00
	Total until January 1, 1918.	$3.526.718.76
4.	January 10, 1919. Payment on the 50 million credit.	
	Interest	$1.625.000
	Commission	125.000
	Total	$5.276.718.76.

[fol. 325] PLAINTIFF'S EXHIBIT 11

Treasury Department, Washington

Assistant Secretary.

MY DEAR MR. POLK: May 9, 1918.

For your information, I am enclosing copy of letter received by Mr. Rathbone from the Division of Foreign Exchange of the Federal Reserve Board, in regard to the action which has been taken by the Guaranty Trust Company of New York in respect to the deposit accounts of the Russian Government and Russian banks. Will you stand for it?

Very sincerely yours, R. C. Leffingwell.

Honorable Frank L. Polk, Counselor for the Department of State.

Enclosure.

[fol. 326] Copy

Federal Reserve Board,
Division of Foreign Exchange,
16 Wall Street,
New York, May 7, 1918.

Mr. Albert Rathbone, Treasury Department, Washington, D. C.

DEAR SIR:

Re Russian Government Funds

Please refer to your letter of the 29th ultimo.

Mr. Albert Breton, Vice-President of the Guaranty Trust Company of New York states that some months ago, after

learning that the Russian Government had taken over all the banks, they consolidated their Government and banks accounts, and show but one balance, which is a balance due to the trust company. This disposed of the balance to the credit of the Russian Government.

You may not approve their action in merging the bank balances and Government funds but that is what the trust company advises has been done.

Very truly yours, (Signed) Penny, Assistant Director, Division of Foreign Exchange.

[fol. 327] June 5, 1918.

My Dear Mr. Leffingwell:

I have your letter of May ninth, in which you tell me that the Guaranty Trust Company has consolidated the accounts of the Russian Government and banks and shows but one balance, which is a balance due the Trust Company.

I regret that the company has taken this course, for, as you know, I have always expressed myself as being decidedly opposed to this plan when the company proposed it, and it is my recollection that the Treasury Department also opposed it.

Yours sincerely, Frank L. Polk.

The Honorable R. C. Leffingwell, Assistant Secretary of the Treasury.

861.51/321.
FLP/KB.

[fol. 328] Plaintiff's Exhibit 12

June 4, 1919.

Personal

Dear Charlie:

About a month ago, Mr. Ughet, the Russian Charge d'Affaires, told me he hoped the Russian deposits with your company could be used to pay the interest due July tenth on the Russian loan, which I understand is payable June eighteenth. He brought up the question again in a conference today, when it became evident that no other possible Russian assets in this country are available and adequate for the purpose, and that consequently if the loan is not extended by some means, Russia will default for the first time

in this country—with results that would apparently be unfavorable.

I realize that your company is both a party to the loan in question, and at the same time also in possession of the only adequate funds which if available to cover the interest, would probably avoid a default. Consequently, I have some hesitation in venturing to express an opinion. At the same time, it occurred to me that it may in fact assist you in reaching a decision to know that in my opinion it would help the general situation a great deal. Both as regards public and private interests, if you could satisfy yourself that some proper means can be devised to use these Russian funds in order to maintain Russian credit.

I would not offer an opinion at all except that, like all the questions connected with Russia, the present one is especially difficult, and were I not also confident that private [fol. 329] interests, as well as the Government, are anxious to do what they can to assist until the Russians are able to act independently and resume control of their own affairs.

I hope you will let me know what develops.

Yours sincerely, —— ——.

Charles H. Sabin, Esquire, Guaranty Trust Company, Fifth Avenue and 43rd Street, New York City.

BM/KB.

Letterhead of Guaranty Trust Company of New York

June 9, 1919.

Hon. Frank L. Polk, Counselor, Department of State, Washington, D. C.

Dear Frank:

Same as Defendant's Exhibit 4 supra, p. —.

[fol. 330] Plaintiff's Exhibit 13

Same as Defendant's Exhibits 21, 22 and 23, supra, pp. ——.

PLAINTIFF'S EXHIBIT 14

No. 1146. Moscow, U. S. S. R.

Subject: Transmittal of Documents Received from the Foreign Office Relative to the Case of Baranowsky Company v. Guaranty Trust Company of New York.

The Honorable The Secretary of State, Washington, D. C.

SIR:

With reference to my telegram No. 513 of December 5, 1935, I have the honor to enclose herewith a copy of a note [1] addressed by the Embassy under date of October 23, 1935, to the People's Commissariat for Foreign Affairs of the Union of Soviet Socialist Republics requesting copies of certain documents relating to the case of Baranowsky Company v. Guaranty Trust Company of New York, and the copies of the documents [2] handed to me by Mr. Neymann, Chief of the Third Western Political Division of the People's Commissariat for Foreign Affairs, in compliance with the Embassy's request.

[fol. 331] It will be noted that the documents given to me by Mr. Neymann are attached to my sealed certificate testifying to the source from which they were obtained.

Respectfully yours, Loy W. Henderson, Charge d'Affaires ad Interim.

Enclosures:

350.
LWH:icm.
In quintuplicate.

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[1] Copy of note No. 327 of October 23, 1935, addressed by the American Embassy at Moscow to the People's Commissariat for Foreign Affairs of the Union of Soviet Socialist Republics.

[2] Documents (under cover of a sealed certificate) handed to Mr. Henderson by Mr. Neymann on December 8, 1935.

[fol. 332] Copy

Enclosure No. 1, to Despatch No. 1146, of Dec. 11, 1935

From the American Embassy, Moscow, U. S. S. R.

No. 327. Moscow, October 23, 1935.

To the People's Commissariat for Foreign Affairs, Moscow:

The Embassy of the United States of America presents its compliments to the People's Commissariat for Foreign Affairs of the Union of Soviet Socialist Republics and has the honor to state that the Government of the United States is seeking to recover in the American courts, under an assignment made to it by the Soviet Government on November 16, 1933, a balance of approximately $5,000,000.00 which in the latter part of 1917 stood on the books of the Guaranty Trust Company of New York to the credit of "Section Etrangère, Ministere des Finances" of the Russian Government.

It is understood that the Guaranty Trust Company plans to make a motion in the court that the suit brought by the American Government be dismissed on the ground that the Statute of Limitations had run against the claim prior to its assignment to the United States. Such a motion, it is believed, will be based upon an alleged repudiation by the Guaranty Trust Company of liability claimed to have been [fol. 333] made in 1918 and 1919 to Mr. Bakhmeteff and Mr. Ughet. It is probable that the Government of the United States will contend that such a notice of repudiation could not affect the claim of the Soviet Government to the funds in question.

The contention of the Government of the United States would be materially strengthened if it could obtain possession of copies of documents relating to an offer believed to have been made by the Guaranty Trust Company to the Soviet Government to pay that Government the sum of $1,000,000.00 in settlement of all claims by and against the Company on Russian account contingent upon a satisfactory disposition of the Baranowsky and Russo-Asiatic Bank suits. The belief that such an offer was made is based on certain statements made to the American Government in 1933 by the Guaranty Trust Company.

In the circumstances it would be deeply appreciated if the Commissariat could obtain and furnish the Embassy with copies of the documents in question for transmission to the United States. Since the motion of the Guaranty Trust

Company may be made in the month of October, the Embassy would be particularly grateful for any steps which the Commissariat may be able to take to expedite this matter.

Enclosure No. 2, to Despatch No. 1146 of Dec. 11, 1935
From the American Embassy, Moscow, U. S. S. R.

[fol. 334] UNION OF SOVIET SOCIALIST REPUBLICS,
Russian Socialist Federated Soviet Republic,
Moscow Oblast,
City of Moscow,
Embassy of the United States of America, ss:

I, Loy W. Henderson, Charge d'Affaires ad interim of the Embassy of the United States of America at Moscow, and Second Secretary of Embassy of the United States of America at Moscow, Union of Soviet Socialist Republics, do hereby certify that the attached documents were handed to me on December 8, 1935, by Mr. A. F. Neymann, Chief of the Third Western Political Division of the People's Commissariat for Foreign Affairs, with the oral statement that they are copies of originals in the possession of the Government of the Union of Soviet Socialist Republics.

I do hereby further certify that in presenting the attached documents Mr. Neymann also stated orally that he was doing so in pursuance of a request contained in a note addressed by the Embassy of the United States of America at Moscow, Union of Soviet Socialist Republics, to the People's Commissariat for Foreign Affairs of the Union of Soviet Socialist Republics, under date of October 23, 1935, which requested copies of documents in the possession of the Government of the Union of Soviet Socialist Republics relating to an offer believed to have been made by the Guaranty Trust Company of New York to pay in certain circumstances certain sums of money to the Government of the Union of Soviet Socialist Republics.

[fol. 335] In Witness Whereof I have hereunto affixed my hand and official seal this eleventh day of December, A. D., 1935.

Loy W. Henderson, Charge d'Affaires ad interim of the Embassy of the United States of America at Moscow, and Second Secretary of Embassy of the United States of America at Moscow.

Baranowski v. Guaranty Trust Company of New York

1) Carson's letter to Commissariat of Finance, dated September 2, 1931.

2) Excerpt from Memorandum attached to letter of Wardwell addressed to Rosenshein, dated October 14, 1933.

3) Huber's letter to Rosenshein, dated July 13, 1934.

4) Excerpt from Memorandum attached to letter of Carson, dated August 19, 1934.

5) Excerpt from Memorandum attached to Carson's letter dated September 5, 1934.

6) Wardwell's letter to Rosenshein, dated October 26, 1934.

7) Copy of Wardwell's Telegram to Commissariat of Finance dated about June 28, 1934.

am/4.

[fol. 336] Copy

Moscow, September 2, 1931.

Baranowsky Company v. Guaranty Trust Company of New York

Commissariat of Finance, Ilyinka 6, Moscow.

Dear Sirs:

Referring to my letter of September 1, and to my subsequent conversations with Mr. Reichel and Mr. Lubimoff, I understand from you that both questions raised in this letter will be adjusted to my entire satisfaction, and thank you for this new evidence of your willingness to co-operate.

May I take this opportunity to confirm what has already been stated to you by Mr. Wardwell and myself, namely that one of the principal defenses being interposed by us in this suit and the one which we shall use the documents being furnished by you to sustain is that the amount in dispute never belonged to Baranowsky Company, but rather at all times to the then existing Government, thru the Russian Treasury. Moreover, counsel for Guaranty Trust Company will endeavor to obtain by the New York court

recognition at least of the effect of the Soviet nationalization decrees in the form of a determination that, under the Russian law applied by that Court, Baranowsky Company no longer exists.

[fol. 337] For these reasons we have at all times felt, and I beg you will allow me to repeat, that the interests of the Soviet Government and those of Guaranty Trust Company, so far as concerns the defeat of the Baranowsky claim, entirely coincide.

As I believe you share my opinion that my departure at this time leaves a certain amount of investigation still to be done, I shall take the liberty of communicating with you on this subject from Paris after I shall have had an opportunity to study the abundance of material now being supplied me.

With renewed expressions of our gratitude for your efficient aid and of my personal pleasure in working with your staff, I am

Very sincerely yours, (Ralph M. Carson).

LES: fm c.

Excerpt from Memorandum Attached to Letter of Wardwell Addressed to Rosenshein, October 14, 1933

We confirm our conversation of Wednesday to the effect that we could enter into no agreement involving the paying over to the Soviet Government of any portion of the funds formerly standing on our books in the name of the Russo-Asiatic Bank as a consideration of any assistance or testimony which the Soviet Government might render or produce as an aid in establishing our contention that these funds are in no way the property of the Baranowsky Company.

[fol. 338] At the same time we confirm that whether or not the Soviet Government aids us in the defense of this suit, we shall be willing (provided we are successful in proving that Baranowsky has no interest in these funds) to arrive at a settlement concerning our mutual claims in connection with ruble and dollar current account balances of the Guaranty Trust Company on the one hand and the Russian Government and/or the former native Russian banks or bankers on the other hand on the following basis:

Upon our successfully defending the Baranowsky suit we will pay over to the Soviet Government forthwith 250.000

doll. and will pay over an additional 750.000 doll. either (a) when diplomatic relations shall have been established through recognition by the United States Government of the Soviet Government and upon the undertaking of the Soviet Government to reimburse the Guaranty Trust Company up to 750.000 doll. in case any subsequent litigation shall successfully establish a judgment against the Guaranty Trust Company for any of these dollar balances; or (b) upon our satisfying ourselves that further litigation is not a serious risk, whichever of the two events, i.e. either (a) or (b) arises the sooner.

We would reserve for separate settlement any liability which may arise or may have arisen out of dollar or ruble collections and out of ruble bonds held in our name by Russian banks.

It is understood that upon arriving at such a settlement the Soviet Government will lend its aid in the defense of [fol. 339] any litigation which may now or hereafter exist against the Guaranty Trust Company with respect to such dollar current account balances.

Regardless of the outcome of this negotiation we wish to express our appreciation of your cooperation in the past.

Copy

July 13, 1934.

A. J. Rosenshein, Esq., President, Amtorg Trading Company, 261 Fifth Avenue, New York City.

Dear Sir:

We refer to the proposal which we originally made to the Soviet Government by Mr. Wardwell's letter addressed to you under date of October 14th, with reference to the mutual claims between the Soviet Government and ourselves in connection with ruble and dollar current account balances of Guaranty Trust Company of New York on the one hand and the Soviet Government (including the former Russian private banks or bankers) on the other hand.

As originally stated to you, this proposal was as follows:

"Upon our successfully defending the Baranowsky suit we will pay over to the Soviet Government forthwith 250.000 dollars and will pay over an additional 750.000 doll., [fol. 340] either (a) when diplomatic relations shall have been established through recognition by the United States

Government of the Soviet Government and upon the undertaking of the Soviet Government to reimburse the Guaranty Trust Company up to 750.000 doll. in case any subsequent litigation shall successfully establish a judgment against the Guaranty Trust Company for any of those dollar balances; or (b) upon our satisfying ourselves that further litigation is not a serious risk whichever of the events, i. e. either (a) or (b) arises the sooner.

We would reserve for separate settlement any liability which may arise or may have arisen out of dollar or ruble collections and out of ruble bonds held in our name by Russian banks.

It is understood that upon arriving at such a settlement the Soviet Government will lend its aid in the defence of any litigation which may now or hereafter exist against the Guaranty Trust Company with respect to such dollar current account balances."

We herewith confirm that we are still willing to enter upon a settlement of all ruble and dollar current account balances with the Soviet Government on the foregoing basis, provided the United States Government shall in form satisfactory to our counsel release its claim upon the said dollar current account balances resulting from the correspondence between President Roosevelt and Mr. Litvinoff dated November 16, 1933.

Yours very truly, J. Paul Huber, Second Vice President.

am/4.

[fol. 341] Excerpt from Memorandum Attached to Letter of Carson

Dated August 19, 1934

Baranowsky Company v. Guaranty Trust Company

Memorandum re Witnesses in Soviet Union

This memorandum is written for the purpose of bringing unmistakably to the attention of the People's Commissariat of Finance and the People's Commissariat for Foreign Affairs the present dangerous position in the Baranowsky

case and what I consider to be the responsibility of those Commissariats and the Soviet Union for that position.

I. Nature of Case and of Proposed Testimony in Soviet Union

From the point of view of the Soviet Union, the fund involved belonged to the Soviet Union, at least prior to November 16, 1933, either by virtue of its successorship to the Imperial and Provisional Russian Governments as owners of the money or by virtue of the various Soviet decrees nationalizing Baranowsky Company and Russo-Asiatic Bank. The decree of June 28, 1918 specifically named Baranowsky Company. The New York courts have so far refused to recognize decrees of this kind as terminating the existence of the corporations involved.

[fol. 342] Excerpt from Memorandum Attached to Carson's Letters

Dated September 5, 1934

Memorandum for Supreme Court of RSFSR.

In connection with the testimony of Konstantin Rodin and N. M. Laschenko in Baranowsky Company v. Guaranty Trust Company of New York, I on behalf of Guaranty Trust Company request the Supreme Court to put to Mr. Rodin the cross-questions numbered 17-20 and to Mr. Laschenko the cross-questions numbers 52-5 In support of this request I most earnestly urge the Court to consider the following facts:

A. Nature of Case

1. ——.
2. ——.
3. ——.

The testimony of Mr. Rodin and Mr. Laschenko will be valuable in the defense of the case, it may even be decisive of the case. The facts testified to by the witnesses are in my opinion unquestionably true. For these reasons, it will be to the advantage of Guaranty Trust Company and the Soviet Union to have the testimony received and considered by the New York court, and equally it will be to the

[fol. 343] interest of Baranowsky to have the testimony stricken out and disregarded.

B. Threatened Destruction of Testimony

I. ——.

Copy

Letterhead of Davis, Polk, Wardwell, Gardiner & Reed

(Stetson Jennings & Russell)

15 Broad Street,

New York

Cable address: Stetson

October 26, 1934.

A. J. Rosenshein, Esq., President, Amtorg Trading Corporation, 261 Fifth Avenue, New York, N. Y.

My Dear Mr. Rosenshein:

I wish to confirm my statement to you this morning with regard to Guaranty Trust Company's letter to you dated July 14th, of which a copy is attached.

Recently, as you know, the United States Government has brought suit against Guaranty Trust Company in the [fol. 344] United States District Court of the Southern District of New York in respect of both the former Ministry of Finance account and the former Russo-Asiatic Bank special account (claimed by Baranowsky) on the books of Guaranty Trust Company. These suits indicate a determination by the United States to enforce its claim to these accounts in virtue of the correspondence between President Roosevelt and Mr. Litvinoff dated November 16, 1933.

In view of the position thus taken by the United States Government, and the fact that the complaints served in these actions must be answered in the very near future, I believe you understood at our meeting today, and I now confirm that from now on Guaranty Trust Company must and does feel free to make any settlement with the United States Government which it deems advantageous. If, however, the United States should, before any such settlement were made or judgment recovered in these actions, release its claims in the manner described in Guaranty

Trust Company's letter of July 14th, then Guaranty Trust Company would be willing to renew its offer of settlement to the Soviet Union with such adaptations as the then existing circumstances may require.

Very sincerely yours, Allen Wardwell.

am/4.

[fol. 345] Copy of Telegram Dated —— —, ——

Commissariat of Finance MSK USSR

New York YM4 131W 27 NIL COM NORTHERN

For Reichel Liubimov have had no reply to our cables sent by Carson of my office September twentieth and October second regarding witnesses and evidence for second trial Baranowsky case stop Case now adjourned to November ninth stop We are attempting to get further adjournment but think success unlikely stop From information at hand we think Rodin Laschenko important witnesses who should testify at trial without fail stop We are willing pay expenses of their trip New York stop Guaranty Trust Company hereby gives you formal notice that if through failure of Russian Government to cooperate in the trial of case at this time Baranowsky obtains judgment Guaranty Trust Company will consider you bound and foreclosed by judgment from any further interest in fund.

Allen Wardwell.

am/4.

[fol. 346] PLAINTIFF'S EXHIBIT 15

The Secretary of the Treasury, Washington

(Seal)

Aug. 27, 1935.

MY DEAR MR. ATTORNEY GENERAL:

In response to your informal request, in connection with the pending action against the Guaranty Trust Company of New York, I am giving you the following statement of the participation of the Treasury in the handling of Russian assets and liabilities in this country after the Russian Revolution in 1917. The statement has been prepared from the files of this Department, as supplemented by conferences with persons who were then officers of the Treasury.

In accordance with authority contained in the Liberty Bond Acts to establish credits in favor of certain foreign governments for the purpose of more effectually providing for the national security and defense and prosecuting the war the Treasury from time to time, prior to the President's proclamation of peace, made loans to allied and associated powers and received their obligations for the amounts so loaned. These amounts, together with other funds in this country belonging to such powers, were for the most part used by the borrowers for the purchase here of war supplies and materials.

During the summer and autumn of 1917, and prior to November 7, of that year, the United States made loans to the [fol. 347] Provisional Government of Russia and received the obligations of that Government in an aggregate amount of $186,400,000. After November 7, 1917, no further loans were made by the Treasury to the Russian Government save only that on November 15, 1917, there was loaned to Russia the sum of $1,329,750 against its obligation in the same sum. The entire amount so loaned was turned over by the Russian Ambassador, Mr. Bakhmeteff, to the Treasury in payment of the interest to November 15, 1917, which had accrued upon the obligations of the Russian Government held by the United States Treasury. When the Provisional Government of Russia was overthrown on or about November 7, 1917, there were outstanding, according to information obtained by the Treasury from the Russian diplomatic representatives in the United States and from other sources, contracts and other commitments of the Provisional Government of Russia for the purchase from American concerns of war supplies and materials amounting to approximately $102,000,000. At this time there were on the books of the National City Bank of New York deposit balances in substantial amounts, (partly derived from the United States Government loans to Russia), against which Boris Bakhmeteff, who had been appointed by the Provisional Government of Russia as Russian Ambassador to the United States and who was then and during the period covered by this letter so recognized by the United States Government, was authorized to draw.

From the time of the entry of the United States into the War, it was a fixed policy of the United States to aid and encourage Russian military effort against the Central

[fol. 348] Powers, in order to relieve the pressure on the Western front. Even before the Russian Revolution of 1917 American manufacturers had been reluctant to enter into contracts on the credit of the Provisional Government of Russia, and on numerous occasions the Treasury had advised such manufacturers that it had established certain credits in favor of that Government to be made available to it for approved purchases here. Similar advices were given American manufacturers by the Allies Purchasing Commission and by the War Industries Board.

The overthrow of the Provisional Government of Russia in November, 1917, necessarily created a serious problem for the United States Government in respect to Russian governmental assets and liabilities in the United States. At that time it was uncertain just what permanent government would be selected by the Russian people. It was important that Russia should continue in the war against the Central Powers, that no action be taken which would jeopardize the relations between the United States and the Russian people, that no cause be given for the repudiation of the Russian indebtedness to the United States, that nothing be done which might affect the validity of the obligations of the Russian Government held by the Treasury, and that the outstanding contracts of the Provisional Government of Russia to American contractors be settled so that their plant capacity could promptly be made available to the United States or to others of the allied and associated powers, so that war supplies called for by such contracts might be made available to the United States or to the nations at war with the Central Powers.

[fol. 349] To meet this situation Mr. Bakhmeteff, as the recognized representative of Russia, undertook, with the cooperation of the Treasury and of the War Industries Board, to liquidate the outstanding Russian contracts in this country and, to the extent that he was able to do so, to meet the obligations in this country of the Russian Government. For such purposes he agreed to use the credit balances of the Russian Government in the National City Bank and the proceeds of the inventory under his control. In accordance with this arrangement, all of the said outstanding contracts were settled by agreement,—some were performed in whole or in part and others canceled. Such settlements were arrived at largely through the good offices of the Treas-

ury and the War Industries Board. Materials delivered under such contracts were purchased from Mr. Bakhmeteff by the United States or by the allied governments to the extent that they were required by them for war purposes. Cash received by Mr. Bakhmeteff was paid by him into the Russian accounts with the National City Bank and checks drawn by Mr. Bakhmeteff or his representatives against such accounts were paid by the National City Bank if and only if the Treasury made no objection to their payment. The balances then remaining in said accounts in the National City Bank, pursuant to instructions from Mr. Bakhmeteff, were turned over to the Treasury beginning in March, 1921, to apply against the interest on the indebtedness of the Russian Government to the United States.

When it was learned that the Provisional Russian Gov- [fol. 350] ernment had some $5,000,000 on deposit with the Guaranty Trust Company of New York, inquiries were made of the Guaranty Trust Company to ascertain whether it would be willing to deal with such deposit account in a manner similar to that which the National City Bank was willing to adopt in respect of its deposit accounts in favor of the Provisional Government of Russia. The Guaranty Trust Company, however, advised that it had not been authorized by the Russian Government to honor checks drawn by Mr. Bakhmeteff against this account and made it clear that they considered themselves accountable for this deposit only to a Russian Government which might in the future be recognized by the United States. In response to later inquiries Guaranty Trust Company stated that early in 1918 it had applied the credit balance in this account as a partial offset against the greater amount claimed to be due to it from the Russian Government through the seizure of its property. At no time was there an attempt on the part of the Treasury, either directly or through Mr. Bakhmeteff, to obtain or exercise any dominion or control over this account in the Guaranty Trust Company or over any other Russian asset. No action was taken to compel the release of this deposit and no demand was made by the United States for its release until after the United States obtained an assignment of it upon the recognition of the Government of the Soviet Union in 1933.

Very truly yours, T. J. Coolidge, Acting Secretary of the Treasury.

The Honorable The Attorney General of the United States.

[fol. 351] PLAINTIFF'S EXHIBIT 16

Address Official Communications to The Secretary of State, Washington, D. C.

(Seal)

Department of State, Washington

In reply refer to EE.

November 21, 1935.

The Honorable Homer S. Cummings, Attorney General.

MY DEAR MR. ATTORNEY GENERAL:

In response to your informal request for information in connection with an action now pending against the Guaranty Trust Company of New York to recover a deposit in that bank standing in the name of the "Ministry of Finance, Section Etrangère" of the Russian Government, I wish to make the following statement with respect to the former diplomatic status in the United States of Mr. George Bakhmeteff and Mr. Boris Bakhmeteff, Ambassadors of Russia, respectively, and of Mr. Serge Ughet, Financial Attaché of the Russian Embassy in Washington.

Mr. George Bakhmeteff presented his letter of credence to the President of the United States and was officially received by him as Ambassador Extraordinary and Plenipo-
[fol. 352] tentiary of Russia on November 28, 1911. He continued to act as Ambassador of Russia until his resignation following the abdication of the Tsar and the establishment by March 16, 1917, of the Provisional Government of Russia. He informed the Secretary of State, by a communication dated April 20, 1917, that the Provisional Government of Russia had accepted his resignation.

Prior to the resignation of Mr. George Bakhmeteff, the Secretary of State was informed by him of the appointment of Mr. Serge Ughet as Financial Attaché of the Russian Embassy in Washington. There are enclosed photostatic copies, authenticated by the Secretary of State, of a communication dated April 7, 1917, from Ambassador George Bakhmeteff, informing the Secretary of State of the ap-

pointment of Mr. Ughet in the capacity indicated, and of the Department's acknowledgment thereof dated April 14, 1917.

Mr. Boris Bakhmeteff presented his letter of credence to the President of the United States and was officially received by him as Ambassador Extraordinary and Plenipotentiary of Russia on July 5, 1917. There is enclosed a photostatic copy, authenticated by the Secretary of State, of a certificate dated January 2, 1919, signed by Frank L. Polk, Acting Secretary of State, containing a statement to that effect. Mr. Bakhmeteff was appointed in the capacity indicated by the Provisional Government of Russia, which was recognized by the Government of the United States on March 22, 1917.

Mr. Serge Ughet continued to act under Ambassador Boris Bakhmeteff as Financial Attaché of the Russian Embassy.

[fol. 353] It is the understanding of this Department that, following the overthrow of the Provisional Government of Russia on November 7, 1917, its successor, the "Provisional Workers' and Peasants' Government" (later known as the Soviet Government) did not recognize Mr. Boris Bakhmeteff and Mr. Serge Ughet as its representatives. In this connection, there is enclosed herewith a photostatic copy, authenticated by the Secretary of State, of the Russian text, together with a translation thereof, of an "Order of the Commissar for Foreign Affairs," dated November 26, 1917, as contained in a publication in the files of the Department of State entitled, in translation, "Collection of Laws and Orders of the Workers' and Peasants' Government, December 12, 1917, No. 4, Part One." This order was published, according to the publication referred to, on November 28, 1917, in No. 20 of the "Gazette of the Provisional Workers' and Peasants' Government." It is understood that the last three dates mentioned above are all according to the Gregorian calendar; these dates, according to the Julian calendar, are, respectively, as follows: December 9, 1917; December 25, 1917, and December 11, 1917. It will be noted that this order dismissed the "Ambassador in the United States of North America—Georgi Petrovich Bakhmeteff." Since the resignation of Mr. George Bakhmeteff as Ambassador of Russia had been accepted by the Provisional Government of Russia, and since Mr. Boris Bakhmeteff was recognized by the United States Government as Ambassa-

dor of Russia at the time of the issuance of the order, it would appear that Mr. Georgi (George) Bakhmeteff was inadvertently named in the order because of the identity of the surnames of the two men. It may be stated [fol. 354] further in this connection that the American Ambassador to Russia, Mr. David R. Francis, informed the Secretary of State by a telegram, dated December 4, 1917, that Trotski, Commissar for Foreign Affairs, had "issued an order three days ago removing all diplomats averse Soviet Government." A photostatic copy, authenticated by the Secretary of State, of this telegram is enclosed herewith. In further evidence, in then existing circumstances, of the fact that the Soviet Government did not consider Mr. Boris Bakhmeteff as its representative in the United States, it may be stated that

(1) Ambassador Francis informed the Secretary of State by a telegram dated June 5, 1918, that he had received the following message from the Commissar for Foreign Affairs, George Chicherin:

"Russian Government nominates as plenipotentiary representative in Washington Citizen Litvinov now same in Paris. Hopes friendship your Government, will not object, our purpose closer relations, intimate friendship between our peoples."

A photostatic copy of this telegram, authenticated by the Secretary of State, is enclosed.

(2) Under date of March 18, 1919, Mr. L. Martens informed the Secretary of State by letter of his appointment as "representative of the Russian Socialist Federal Soviet Republic in the United States of North America" and enclosed a copy of a document, dated January 2, 1919, in [fol. 355] Russian, together with a translation thereof, certifying to his appointment "as Representative of the People's Commissariat for Foreign Affairs in the United States of North America." Photostatic copies of these documents, authenticated by the Secretary of State, are enclosed.

The Government of the United States did not receive in the capacities indicated above either Mr. Litvinoff or Mr. Martens. It continued to recognize Mr. Boris Bakhmeteff as Ambassador and Mr. Ughet as Financial Attaché. Mr. Bakhmeteff's status as Ambassador continued until June

30, 1922, and that of Mr. Ughet as Financial Attaché until November 16, 1933. From December 3, 1918, to July 31, 1919, Mr. Ughet was recognized by the Department of State as Chargé d' Affaires ad interim. A photostatic copy of a certificate, dated January 2, 1919, signed by Frank L. Polk, Acting Secretary of State, containing a statement that Mr. Ughet was recognized as Chargé d' Affaires ad interim by the Department of State, has been authenticated by the Secretary of State and is enclosed. There are also enclosed photostatic copies, authenticated by the Secretary of State, of the following documents:

1. A letter from Ambassador Boris Bakhmeteff, dated June 7, 1922, to the Secretary of State, transmitting a copy of a document dated June 7, 1922, signed by Ambassador Bakhmeteff, vesting in Mr. Ughet "the custodianship and the handling of the properties of the Russian Government in this country";

[fol. 356] 2. A copy of a letter "concerning the legal protection of Russian rights," dated June 7, 1922, to Coudert Brothers, Counselors at Law, from Ambassador Bakhmeteff;

3. A true copy of a letter, dated June 9, 1922, from the Secretary of State acknowledging Ambassador Bakhmeteff's letter of June 7, 1922;

4. A letter from Mr. Serge Ughet, Russian Financial Attaché, dated October 21, 1933, to the Department of State, and a true copy of the Department's reply thereto dated November 16, 1933.

One of the reasons for the continued recognition by the Government of the United States of the diplomatic status of Mr. Boris Bakhmeteff and Mr. Ughet as representatives of Russia was that there were outstanding in the United States at the time of the revolution of November 1917, contracts in substantial amounts concluded between the Russian Government and American manufacturers for war supplies and materials and that there was located in the United States a large inventory of such supplies and materials. It was considered important that there should be in this country a representative of the Russian State who might be in a position to liquidate these contracts and dispose of these materials in such a way that the interests of

American manufacturers might be protected from loss and the materials contracted for might be used for war purposes by the United States or others of the allied powers. An arrangement with this end in view was arrived at by [fol. 357] the Government of the United States with Mr. Bakhmeteff and was carried out by him and Mr. Ughet to the eminent satisfaction of the Government of the United States. Another reason for such continued recognition was that the Government of the United States was interested in the protection of the rights of American holders, including the Government of the United States, of Russian Government obligations, as is indicated in certain of the documents appended hereto.

In connection with the deposit in the Guaranty Trust Company of New York standing in the name of the "Ministry of Finance, Section Etrangère," the Department of State, apparently having in mind the interests of this country as outlined in the preceding paragraph, endeavored to ascertain from the Guaranty Trust Company the exact nature of the deposit in question. Mr. Frank L. Polk, Counselor of the Department of State, in a letter, dated January 29, 1918, to Mr. Sabin, President of the Guaranty Trust Company, stated that he would like to have "a statement as to how the funds that you have on deposit for the Russian accounts came into your possession, and what the instructions were." Photostatic copies of this letter of Mr. Polk, of Mr. Sabin's reply thereto of January 31, 1918, of the enclosure to Mr. Sabin's letter, namely, a copy of a letter to Mr. Ughet dated December 12, 1917, and of Mr. Polk's acknowledgment of February 4, 1918, of Mr. Sabin's letter to him, have been authenticated by the Acting Secretary of State and are enclosed. Subsequently, in a letter dated April 9, 1918, the Russian Ambassador, Mr. Boris Bakhmeteff, furnished Mr. Polk information as to the nature of [fol. 358] the deposit and requested that the Department of State "find it possible to have the funds released and thus have assured the proper payment of interest to the holders of Russian securities in this country." A photostatic copy, authenticated by the Secretary of State, of this letter is enclosed.

On May 9, 1918, Mr. R. C. Leffingwell, Assistant Secretary of the Treasury, addressed a letter to Mr. Frank L. Polk, Counselor of the Department of State, enclosing a

copy of a letter, dated May 7, 1918, from Mr. Penny, Assistant Director of the Division of Foreign Exchange of the Federal Reserve Board, informing the Treasury Department that the Guaranty Trust Company had consolidated the accounts of the Russian Government and banks and that there was "but one balance, which is a balance due to the trust company." Mr. Penny stated further in his letter that "this disposed of the balance to the credit of the Russian Government." Mr. Polk replied to Mr. Leffingwell by a letter, dated June 5, 1918, stating that he opposed the consolidation and that it was his "recollection that the Treasury Department also opposed it." Photostatic copies, authenticated by the Acting Secretary of State, of this correspondence are enclosed.

Under date of June 4, 1919, Mr. Polk took up with the Guaranty Trust Company by letter the question of having the "Russian deposits" released and expressed the opinion that "it would help the general situation a great deal, both as regards public and private interests, if you could satisfy yourself that some proper means can be devised to use these Russian funds in order to maintain Russian credit." Photo-
[fol. 359] static copies, authenticated by the Secretary of State, of Mr. Polk's letter of the date indicated, and of Mr. Sabin's reply thereto, dated June 9, 1919, are enclosed.

In order to ascertain "the potential assets of the Russian people in this country" the Secretary of State, Mr. Charles Evans Hughes, addressed a communication to the Guaranty Trust Company, dated December 2, 1921, requesting information with respect to a "credit of approximately $5,000,000 in favor of the Government of Russia or of some organ of the Russian Government." Photostatic copies, authenticated by the Secretary of State, of Secretary Hughes' communication of December 2, 1921, Mr. Sabin's reply thereto of December 9, 1921, and of Secretary Hughes' acknowledgment of January 17, 1922, are enclosed.

A list of the documents, mentioned above, authenticated by the Department is attached.

Sincerely yours, (Signed) Cordell Hull.

Enclosures: List of documents and documents listed therein.

[fol. 360] List of Documents, Authenticated by the Department of State, Enclosed With a Letter to the Attorney General, Dated November 21, 1935

1. A communication from Mr. George Bakhmeteff, Ambassador of Russia, dated April 7, 1917, to the Secretary of State, and a true copy of the Secretary of State's acknowledgment thereof, dated April 14, 1917.

2. A true copy of a certificate, dated January 2, 1919, signed by the Acting Secretary of State Mr. Frank L. Polk.

3. The first page of a publication bearing the title, in translation, "Collection of Decrees and Orders of the Workers' and Peasants' Government, December 12, 1917, No. 4, Part One," and page 59 of the same publication, together with a translation of decree No. 63 of the People's Commissar for Foreign Affairs, L. Trotski, printed on page 59 of the above-mentioned publication, certified by Mr. Ignatius Jawney, a translator in the Department of State.

4. A telegram from Ambassador Francis at Petrograd, dated December 4, 1917, to the Secretary of State.

5. A telegram from Ambassador Francis at Petrograd, dated June 5, 1918, to the Secretary of State.

[fol. 361] 6. A letter, dated March 18, 1919, to the Secretary of State, signed by "L. Martens, Representative of the Russian Socialist Federal Soviet Republic in the United States of North America," together with two of its enclosures, namely, a document, in Russian, certifying to the appointment of Mr. Martens as "Representative of the People's Commissariat for Foreign Affairs in the United States of North America," signed "George Chicherin, People's Commissar for Foreign Affairs," and a translation thereof.

7. A letter, dated June 7, 1922, from Mr. Boris Bakhmeteff, Ambassador of Russia, to the Secretary of State, and its two enclosures; a true copy of a letter from the Secretary of State in acknowledgment thereof, dated June 9, 1922.

8. A letter from Mr. Serge Ughet, Russian Financial Attaché, dated October 21, 1933, to the Department of State, and a true copy of the Department's reply thereto, dated November 16, 1933.

9. The record copy of a letter, dated January 29, 1918, from Mr. Frank L. Polk, Counselor of the Department of State, to Mr. Charles H. Sabin, President of the Guaranty Trust Company; Mr. Sabin's reply, dated January 31, 1918, together with its enclosure, dated December 12, 1917; and a record copy of Mr. Polk's acknowledgment, dated February 4, 1918.

[fol. 362] 10. A letter, dated April 9, 1918, from Mr. Boris Bakhmeteff, Ambassador of Russia, to Mr. Frank L. Polk, Counselor of the Department of State, and its enclosure.

11. A letter, dated May 9, 1918, from Mr. R. C. Leffingwell, Assistant Secretary of the Treasury, to Mr. Frank L. Polk, Counselor of the Department of State, together with its enclosure, dated May 7, 1918, and a true copy of Mr. Polk's reply thereto, dated June 5, 1918.

12. A record copy of a letter from Mr. Frank L. Polk, Counselor of the Department of State, dated June 4, 1919, to Mr. Charles H. Sabin, President of the Guaranty Trust Company, and Mr. Sabin's reply thereto, dated June 9, 1919.

13. A true copy of a letter from the Department of State, dated December 2, 1921, to the Guaranty Trust Company; a letter, dated December 9, 1921, from the Guaranty Trust Company in reply thereto; and a true copy of an acknowledgment by the Department of State, dated January 17, 1922.

[fol. 363] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY AFFIDAVIT OF ALBERT BRETON

STATE OF NEW YORK,
County of New York, ss:

Albert Breton, being duly sworn, says:

I am and have been since 1916 a Vice-President of the above-named defendant, Guaranty Trust Company of New York, and during the period 1917-22 I was Vice-President in charge of the Foreign Department thereof.

I am now Vice-President of Guaranty Trust Company of New York in charge of its foreign branches and have my

headquarters in Paris, France. I recently came from Paris on a temporary visit to New York.

At all relevant times I was familiar with the consolidation of accounts effected on the books of Guaranty Trust Company of New York in February 1918 whereby, among [fol. 364] other things, the account with Guaranty Trust Company of the Russian Government Ministry of Finance was closed and the former balance therein was set off against the dollar equivalent of the indebtedness owing to Guaranty Trust Company by various former Russian private banks in ruble account. I understand that in the above-entitled action the United States Government as assignee of the Russian Government is seeking to recover the said Ministry of Finance account.

I have read the affidavit of Dmitry Ter-Assatouroff herein verified October 7, 1935. I was acquainted both with Mr. Serge Ughet, the Financial Attache to the Russian Embassy, and with Mr. Ter-Assatouroff during the period mentioned in his said affidavit. I knew that Mr. Ughet was representative of the Ministry of Finance in New York, and that Mr. Ter-Assatouroff was assistant representative of the Ministry of Finance in New York. I had several conversations with Mr. Ughet and with Mr. Ter-Assatouroff during the years 1918 and 1919 and after the set-off or consolidation of accounts above described, which conversations related (among other things) to the said Ministry of Finance account. I can fix the dates of these conversations only approximately, my recollection being that they occurred at intervals between February 1918 and about June 15, 1919, the latter being the approximate date on which I left New York on a trip to Europe. On one or two of these occasions Mr. Ughet and Mr. Ter-Assatouroff together called on me in my office at Guaranty Trust Company of New York in New York, and on one or more additional occasions Mr. Ter-Assatouroff came alone. My recollec- [fol. 365] tion of the conversations at these times is in substance as stated by Mr. Ter-Assatouroff in his said affidavit verified October 7, 1935; namely that Mr. Ughet and Mr. Ter-Assatouroff or Mr. Ter-Assatouroff alone (when he came alone) asked me whether Guaranty Trust Company of New York would permit the said account to be drawn on by the Russian Government representatives in the United States. In reply to these statements, on each of the said

occasions, I said in substance that Guaranty Trust Company would not make any payment out of the account, because of Guaranty Trust Company's own claims against the Russian Government for losses due to the Soviet Government's confiscation of Guaranty Trust Company's funds in Russia.

I have also read the affidavit of Serge Ughet herein verified November 27, 1935. Mr. Ughet states therein that he has no recollection of having conferred with Mr. Sabin or anyone on behalf of Guaranty Trust Company in the presence of Mr. Ter-Assatouroff. This statement, however, does not affect my recollection which is as above stated. In so far as the statements in Mr. Ughet's said affidavit rest upon the sentence quoted therein from the letter of Mr. Sabin dated December 9, 1921, to Honorable Charles E. Hughes, as Secretary of State, I believe that Mr. Ughet incorrectly interprets that letter. It was my understanding in 1918 and 1919 that the Russian Ambassador through Mr. Ughet and Mr. Ter-Assatouroff was trying to exercise authority over the said account and to control the same, and I believe that the sentence in Mr. Sabin's letter was intended by him to refer only to the period before the Soviet Revolution. This understanding is derived both from my reading of the said letter and from conversations which I had with [fol. 366] Mr. Sabin during 1918 and 1919 with respect to the said Ministry of Finance account.

In his said affidavit Mr. Ughet mentions a statement made to him by Mr. Murray of Coudert Brothers as his attorney attributing a statement to Mr. Russell as attorney for Guaranty Trust Company of New York with reference to the drawing of a treasurer's check on the said Ministry of Finance account by Guaranty Trust in favor of the Russian Government, the endorsement of that check by Mr. Ughet, and the guarantee of such endorsement by National City Bank. To the best of my recollection no such proposal ever came to my attention at any time when I was in charge of the Foreign Department of Guaranty Trust Company or at any other time prior to my reading of Mr. Ughet's said affidavit; and I am advised by Guaranty Trust Company's counsel, and believe, that the surviving partners of Mr. Russell (now deceased) have no recollection of any such proposal and that the records of the firm contain no trace of any such proposal. It was and is my recollection, on the

contrary, that I as an officer of Guaranty Trust Company of New York informed Mr. Ughet and Mr. Ter-Assatouroff that Guaranty Trust Company would not effect any payment out of the said account.

Albert Breton.

Sworn to before me this 24th day of December, 1935. H. A. Meinken, Notary Public, Nassau County No. 2048.

[fol. 367] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY AFFIDAVIT OF J. PAUL HUBER

STATE OF NEW YORK,
County of New York, ss:

J. Paul Huber, being duly sworn, says:

I am and have been since February 1920 in the employ of the above-named defendant Guaranty Trust Company of New York, assigned to the Foreign Department thereof, and am now a Second Vice-President in the Foreign Department. I am familiar with the proceedings heretofore had in this action, and made an affidavit herein on December 14, 1934, in support of said defendant's motion to take the testimony before trial of Boris Bakhmeteff and Serge Ughet.

This action involves the account formerly standing on the defendant's books under the title Section Etrangere Ministere des Finances and belonging to the Russian Government, which account was set off by the defendant in part [fol. 368] payment of its own claims against the Russian Government on February 25, 1918. I am informed by defendant's attorneys that the United States Attorney has requested certain information with respect to the origin of this account, particularly the correspondence had by the defendant with the Russian Government at that time, in connection with defendant's pending motion to dismiss the action. While advised by counsel that the information requested is for the most part irrelevant to such motion, I make this affidavit for the purpose of meeting the request of the United States Attorney.

1. Defendant's files contain a copy of a cablegram dated Petrograd May 25, 1916, and signed by three representatives of New York banks, including Rolph Marsh, now deceased, who was a representative of Guaranty Trust Company of New York. This cablegram outlined a plan for the opening to the Imperial Russian Government by National City Bank and by Guaranty Trust Company of a credit of $50,000,000, and contained the words:

"Twenty-five Million Dollars of the loan to be placed to the credit of the Imperial Russian Government at the National City Bank in New York and Twenty-five Million Dollars to be placed to the credit of the Imperial Russian Government in the Guaranty Trust Company in New York."

It appears from defendant's files that this proposed $50,000,000 credit was actually established, on July 10, 1916, and that on July 10, 1916, Guaranty Trust Company of New York cabled the Chancellor of Credit, Imperial Russian Government, Petrograd, as follows:

[fol. 369] "A group consisting of J. P. Morgan and Company, National City Bank, Kidder Peabody and Company, Lee Higginson and Company and ourselves have today established a credit in New York of Fifty Million Dollars in favor of the Imperial Russian Government (stop) The resultant funds will be deposited with the several members of the group but drafts covering any unused portion of the credit may now at any time be drawn in equal amounts on the National City Bank and ourselves our two institutions making requisite adjustments with other members of the group"

Further it appears from defendant's files that on July 18, 1916, Guaranty Trust Company of New York cabled the Chancellor of Credit at Petrograd as follows:

"On July Tenth value July Eleventh we opened credit of Twenty Five Million Dollars in name of Section Etrangere du Minister des Finances de Russie on the same terms as the same account at National City Bank"

The cablegrams exchanged by the defendant with the Russian Government authorities in Petrograd in connection with the loan do not describe the Section Etrangere

Ministere des Finances account, except as set forth in the foregoing extracts therefrom.

2. In accordance with the request of the United States Attorney the defendant has searched in its archives for the correspondence in connection with the opening of the said [fol. 370] account, and has found and produces the documents of which photostatic copies are annexed hereto marked as follows:

Letter from The National City Bank of New York to Guaranty Trust Company of New York dated July 18, 1916: Exhibit 27.

Letter from The National City Bank of New York to Guaranty Trust Company of New York dated July 19, 1916: Exhibit 28.

Document in French dated at Petrograd September 1915 and signed by D. Nikiforoff with attached list of signatures: Exhibit 29.

Letter in French from Credit Chancery of Ministry of Finance of Imperial Russian Government to Guaranty Trust Company of New York dated July 19, 1916: Exhibit 31.

Carbon file copy of letter from Guaranty Trust Company of New York to Ministry of Finance of Imperial Russian Government at Petrograd September 8, 1916: Exhibit 33.

Correct English translations of the above described Exhibits 29 and 31 are attached hereto marked respectively Exhibits 30 and 32.

No signature list or instruction with respect to the persons who would draw upon the account on behalf of the Russian Government are contained in defendant's files other than the document marked Exhibit 29 hereto. Two [fol. 371] copies of said document appear in defendant's files, and it is my conjecture that one of these copies was enclosed by National City Bank in its letter of July 19, 1916, Exhibit 31 hereto. Defendant's files contain the carbon copy of a cablegram from it to the Chancery of Credit at Petrograd dated July 20, 1916, reading as follows:

"We have received from National City Bank list dated September Nineteen Hundred Fifteen giving signatures of those authorized to check against account of the Section Etrangere Ministere des Finances shall we use this in honoring withdrawals"

3. In addition to the foregoing defendant has discovered in its archives a printed form of cipher code referred to in the Credit Chancery's letter of July 6/19, 1916, Exhibit 28 hereto. This cipher code contains typewritten numerals and ink additions, bears the seal of the Imperial Russian Government, and is marked:

"Ministere des Finances de Russie, Section Etrangere, St. Petersbourg"

Preceding the typewritten numerals which constitute the code, this document contains an explanation of the method by which test numbers used in Credit Chancery cablegrams would be made up by combining the date of dispatch, the month, etc.

4. I have examined the files of correspondence of the defendant with the Foreign Section of the Credit Chancery of the Ministry of Finance relative to the operation of the [fol. 372] account entitled Section Etrangere Ministere des Finances on the books of the defendant in and after July 1916. All payments made out of this account by the defendant were made upon cable order signed "Ministere des Finances" or the like and bearing in each case a test number in conformity with the said cipher code. Each of these cablegrams ordering payments was confirmed by a letter on the letterhead of the Foreign Section of the Ministry of Finance bearing the signature of some person on behalf of the Director or Vice-Director of the Credit Chancery and the signature of some person on behalf of the Chief of the Foreign Section. For the most part these confirmatory letters are signed by C. Rodin on behalf of the Director and by A. Boyarinsky on behalf of the Chief of the Foreign Section. Sometimes, however, the signature of P. Fetterlein appears on behalf of the Vice-Director instead of a signature for the Director. Some letters are also signed by C. Tschoubakoff on behalf of the Chief of the Foreign Section, and some by D. Grimm on behalf of the Chief of the Foreign Section. A few letters are signed by A. Boyarinsky for the Vice-Director and by A. Deviatkine for the Chief of the Foreign Section.

The latest letter contained in the records and archives of the defendant from the Foreign Section of the Credit Chancery of the Ministry of Finance with respect to the said account is dated June 21, 1917, modern style, or June

8, 1917, Russian style, and was received by the defendant (according to the time stamp thereon) on August 25, 1917. No cablegrams from said Foreign Section authenticated [fol. 373] by said cipher code after the year 1916 have been located by the defendant in its archives despite a diligent search therefor. No payments were made by the defendant out of the Section Etrangere Ministere des Finances account after November 7, 1917. The latest payment made by the defendant out of the said account was made on July 10, 1917, apart from a debit appearing under date of August 13, 1917, which reverses a previous erroneous credit entry.

5. There is attached hereto marked Exhibit 34 a photostatic copy of a memorandum appearing in defendant's credit file under the title of the said account, dated March 19, 1917, and initialed G.M.P.M. Defendant's records show that Mr. Grayson M.-P. Murphy was then a Vice-President. I am familiar from the course of business of the defendant with the form upon which this memorandum appears and with the method in which memoranda upon this form were prepared, distributed, copied and filed, and I believe the attached Exhibit 34 to be a true copy of a memorandum made by Mr. Murphy on March 19, 1917, in the regular and usual course of business of the defendant.

J. Paul Huber.

Sworn to before me this 27th day of January, 1936.
H. A. Meinken, Notary Public, Nassau County No. 2048.

[fol. 374]. In United States District Court

[Title omitted]

Reply Affidavit of Dimitry G. Ter-Assatouroff

State of New York,
County of New York, ss:

Dimitry G. Ter-Assatouroff, being duly sworn, says:

I am the same person who made and verified affidavits in this action on October 7, 1935 and on November 22, 1935. The latter affidavit reproduces a stenographic transcript of

answers made by me to questions put by Leon E. Spencer, Assistant United States Attorney for the Southern District of New York, at the United States Consulate General in Montreal, Canada, in which city I reside.

1. Among the said questions and answers appear the following:

[fol. 375] "Q. Do you remember the names of those two people?

"A. It was not two people in particular. There may have been at least fifteen; any two of those fifteen. The signatures of those were sent to the banks which were holding those amounts, because they were the people who had something to do with those accounts. They were in charge of those particular accounts. It was a formality. At that time nobody foresaw the possibility of any trouble with respect to those accounts."

The list approximating fifteen referred to in this answer was comprised of the signatures of the Director of the Credit Chancery, the Vice-Director, the Director of the Foreign Section (Section Etrangere), the Chief of the Second Section, the Chief of the First Bureau of the Second Section, the Assistant Chief of said First Bureau, together with a certain number of deputies and a number of minor employees of the various sections. The signatures of these minor employees were included as a matter of technical convenience. I have examined a photostatic copy, marked Exhibit 29, of a circular letter in French dated at Petrograd September 1915 and signed by D. Nikiforoff with an annexed list of six signatures. I knew Mr. Nikiforoff in Russia as Director of the Credit Chancery, and knew Mr. Rodine, whose name appears on the said signature list, as Director of the Foreign Section. The other five names appearing on Exhibit 29 are names of persons all of whom (except Mr. Taurit, who occupied a rank second or third after the Di-[fol. 376] rector of the Foreign Section) were minor employees of the Foreign Section. None of these five persons were technically government officials, all being employed on contract.

The bulk of the Russian Government's accounts abroad before and during the war were operated and controlled through the First Bureau of the Second Section of the Credit Chancery. The head of the Second Section in 1916

was A. C. Timkowsky. The functions of the Second Section were to raise and to handle all government loans both internal and external. The function of the Foreign Section was more particularly to operate in foreign currencies through arbitrage and other forms of foreign exchange trading, and also to issue letters of credit for officials serving abroad on government missions.

2. Among said questions and answers appear also the following:

"Q. I suppose the Guaranty Trust Company took the position that the account was subject to withdrawal by officials of the Chancellery of Credit and that the Russian Ambassador was never authorized to do so.

"A. Naturally, the Guaranty Trust Company stood on a perfectly formal point of view, which was, I believe, the only point of view which a bank should take, but the National City Bank agreed."

I did not mean by this statement to say that Guaranty Trust Company rested its refusal to pay only on the formality of [fol. 377] signatures, inasmuch as I understood at the time that the refusal to pay was on account of Guaranty Trust Company's own claims against Russia.

Among the said questions and answers also appear the following:

"Q. Did anyone associated with the Guaranty Trust Company ever ever say anything in your presence to give you the impression that they would be unwilling to surrender the balance of the deposit account in the event that the authorized signatures from the Chancellery of Credit were communicated to them?

"A. Well, that was even expressed in the letter of Mr. Sabin in the letter which we got in December 1917 or January 1918. Mr. Sabin thought that under the then circumstances in Russia he would be very doubtful whether he could honor the signatures of those two people.

"Q. Other than the information which you gained from that letter you couldn't say?

"A. I don't remember that much.

"Q. Your answers to the last two questions are wholly predicated on the letter of Mr. Sabin in December 1917 or January 1918?

"A. Yes."

I did not intend by these answers to give the impression that I did not know whether Guaranty Trust Company would surrender the account if the authorized signatures of the Credit Chancery were furnished, but rather to say that to my recollection there was no discussion whether or not such signatures should be furnished. In fact I knew that [fol. 378] guaranty Trust Company would not surrender the account whether or not authorized signatures were furnished, because I knew (as above stated) that the refusal to pay was due principally to Guaranty Trust Company's claims against Russia.

Mr. Spencer in his said questions never directed my attention to or inquired what was the principal reason in my mind for Guaranty Trust Company's refusal to pay. Among his questions he asked the following and I made the following answer:

"Q. I suppose you would be willing to say that the reluctance of the Guaranty Trust to surrender this deposit account to the Russian Embassy was predicated upon their uncertainty concerning developments in Russia?

"A. I believe so, that that was one of the reasons."

Subsequently he asked the following question and I made the following answer:

"Q. I ask that question principally as the result of your having said that the principal reason for the refusal of the Guaranty Trust Company to pay this account was due to the absence of the proper request for its payment?

"A. Well, that was the reason which Mr. Sabin expressed and again in the same letter he said that even with those two signatures he would be reluctant to make a payment."

Subsequently upon reading this question and answer and before executing my affidavit containing it, I struck out "the [fol. 379] principal reason" from Mr. Spencer's question and substituted "one of the reasons", so as to make the question and answer in my affidavit read as follows:

"Q. I ask that question principally as the result of your having said that one of the reasons for the refusal of the Guaranty Trust Company to pay this account was due to the absence of the proper request for its payment?

"A. Well, that was the reason which Mr. Sabin expressed and again in the same letter he said that even with those two signatures he would be reluctant to make a payment."

My reason for making this change was to make it clear that I understood at the time that Guaranty Trust Company's allusion to the absence of authorized signatures was only a technical reason for its refusal to pay and that the real or principal reason was its claims against Russia.

3. Among the said questions and answers also appear the following:

"Q. Did you go with Mr. Bakhmeteff and Mr. Ughet to the Guaranty Trust Company?

"A. No. After that I was on several occasions with Mr. Ughet at the Guaranty Trust when he was having conversations with them in order to have the funds released."

In answering "No", I had in mind Mr. Ughet's first visit to [fol. 380] Guaranty Trust Company in December 1917. Upon subsequent occasions I was several times personally with Mr. Ughet at Guaranty Trust Company, as explained in both my said affidavits.

Among the said questions and answers also appear the following:

"Q. Did you have your conversations with Mr. Sabin of the Guaranty Trust?

"A. Not myself, I didn't talk about that although I remember that once I went there and talked to Mr. Albert Breton and presented again that request on behalf of Mr. Ughet although as I say personally, I was doing that as a matter of discipline because it was the policy of the office and I didn't express my views to the Guaranty Trust Company."

By this answer I mean only that, when Mr. Ughet and I called upon Mr. Sabin as stated in my affidavit verified October 7, 1935, the conversation on behalf of the Russian Embassy was conducted by Mr. Ughet and not by myself. The same is true of the other visits which I made to Guaranty Trust Company in company with Mr. Ughet.

4. I have read Mr. Ughet's affidavit herein verified November 27, 1935, in which he says:

"That deponent has read the affidavit of Mr. Ter-Assatouroff and believes it is erroneous and has no recollection that he ever conferred with Mr. Sabin or anyone on behalf of the Guaranty Trust Co. in the presence of Mr. Ter-Assatouroff, and further, deponent states on information

[fol. 381] and belief that he never requested 'Guaranty Trust Co. to place at the disposal of the Russian Embassy' the sum of $4,976,722.78. (Assatouroff affidavit dated October 7, 1935, page 5.)"

My own recollection on the subject is quite clear and is not affected by the foregoing statement.

Dimitry G. Ter-Assatouroff.

Sworn to before me this 16th day of December, 1935.
Wm. H. Bruder, Notary Public, Bronx County No. 122.

[fol. 382] In United States District Court

[Title omitted]

Reply Affidavit of Grayson M.-P. Murphy

State of New York,
County of New York, ss:

Grayson M.-P. Murphy, being duly sworn, says:

I am a member of the firm of Grayson M.-P. Murphy & Co., investment bankers, No. 52 Broadway, New York, N. Y., and made an affidavit herein on February 25, 1935.

In 1916 and 1917 I was a Vice-President of Guaranty Trust Company of New York, and was familiar with the opening of the account with Guaranty Trust Company of New York in the name of Section Etrangere Ministere des Finances as described in the affidavit of J. Paul Huber herein verified January 27, 1936, which affidavit I have read. With respect to the conversations described in the memorandum bearing my initials dated March 19, 1917, of which a photo-[fol. 383] static copy is attached to Mr. Huber's affidavit as Exhibit 34, I retain no independent recollection. From the fact that a copy of this memorandum appears in the credit files of Guaranty Trust Company of New York in regular order under the date of March 19, 1917, and from my knowledge of the course of business of the defendant at that time, which I obtained as Vice-President, I believe and have no doubt that I did dictate and initial the memorandum in

question, and that the conversations therein described took place as stated in said memorandum.

Grayson M.-P. Murphy.

Sworn to before me this 13th day of February, 1936.
Samuel E. Gruman, Notary Public, Kings County.

[fol. 384] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY AFFIDAVIT OF JOHN WATTS

STATE OF NEW YORK,
County of New York, ss:

John Watts, being duly sworn, says:

I am Vice-President and Secretary of Mulliken & Co., investment bankers, No. 52 Broadway, New York, N. Y. From 1913 to August 1917 I was head of the Bookkeeping Department of Guaranty Trust Company of New York, and was in that capacity familiar with the account appearing on its books under my supervision under the title Section Etrangere Ministere des Finances. About August 1917 I was transferred to the Foreign Department of Guaranty Trust Company.

1. As head of the Bookkeeping Department I paid particular attention to the said Section Etrangere Ministere des Finances account, for the reason that upon the opening of the account Mr. Sabin, President of Guaranty Trust Company, instructed me to do so. I have read the affidavit of J. Paul Huber herein verified January 27, 1936, and con-[fol. 385] firm Mr. Huber's statement with respect to the manner in which payments out of the account were handled.

2. Monthly statements of account were prepared in the Bookkeeping Department under my supervision for the Russian Government. The Section Etrangere Ministere des Finances account was one of several under my supervision which were handled under special instructions; that is, they were not forwarded by mail or messenger in regular course to an address appearing under the name of the account. No address appeared upon the customers' ledger

of Guaranty Trust Company under the name of the account. The monthly statements covering the Section Etrangere Ministere des Finances account, when prepared, were placed on my desk, and were then checked off by me against the special instructions which I had for delivery. It is my definite recollection that these monthly statements were not mailed to any address in Russia; and it is my best recollection that they were delivered to an office in the Flatiron Building at 23rd Street, either by a messenger of Guaranty Trust Company or by someone calling from that office and taking the statements from the Bookkeeping Department or the pass book window. The same of Serge Ughet is very familiar to me in connection with this account, and I have a recollection of having had some transactions with him with respect to the account, but cannot at this time recollect what those transactions were.

John Watts.

Sworn to before me this 13th day of February, 1936.
Matthew V. Stepsis, Notary Public, Kings County.

[fol. 386] In United States District Court

[Title omitted]

Reply Affidavit of Ralph M. Carson

State of New York,
County of New York, ss:

Ralph M. Carson, being duly sworn, says:

I am one of the attorneys for the defendant herein and am familiar with all proceedings heretofore had in this action.

1. In an action in the Supreme Court, New York County, entitled P. V. Baranowsky Company, Ltd., plaintiff, against Guaranty Trust Company of New York, defendant, Conrad de Sahmen testified upon deposition in Paris, France, in my hearing, in September 1931, as follows:

"Q. 1. Are you at present engaged in any business, Mr. de Sahmen?

A. Yes, I am acting as financial adviser to private companies.

Q. 2. Are you a Russian citizen?

A. I am a Russian refugee with a League of Nations passport.

[fol. 387] Q. 3. Where and when were you born?

A. On the twenty-fifth of June, eighteen hundred and seventy-four.

Q. 4. In Russia?

A. In Russia.

Q. 5. When did you leave Russia?

A. In December nineteen hundred and eighteen.

Q. 6. When did you come to Paris?

A. March nineteen hundred and nineteen.

Q. 7. After you left Russia where did you first reside?

A. From nineteen hundred and nineteen, the second part of nineteen hundred and nineteen, till nineteen hundred and twenty-seven I have been residing in London and since then in Paris.

Q. 8. Before you left Russia were you connected with the Chancery of Credit?

A. Yes, I was.

Q. 9. When did you first become connected with the Chancery of Credit?

A. I started as volunteer clerk in eighteen hundred and ninety-six and I worked up gradually to the position of Director which I became in December nineteen hundred and sixteen.

Q. 10. What position did you hold in the Chancery of credit in the latter part of the year nineteen hundred and fifteen?

A. I was Vice-Director.

Q. 11. Did you go out of Russia during the latter part of the year nineteen hundred and fifteen?

A. Yes, I left on the nineteenth of August, nineteen hundred and fifteen; I came back in May, nineteen hundred and sixteen, stayed a short time and then went back together with the then Minister of Finance, Mr. Bark, who was going [fol. 388] for official negotiations to London and Paris, and I came back with him in July nineteen hundred and sixteen, from which time I stayed in Petrograd.

Q. 12. When you left Russia in nineteen hundred and fifteen and stayed away until May nineteen hundred and sixteen, where were you?

A. In London and Paris on an official mission as a delegate of the Russian Treasury to arrange the working of inter-allied credits.

Q. 13. You say you came back finally in July nineteen hundred and sixteen?

A. Yes.

Q. 14. When you came back to Petrograd in July nineteen hundred and sixteen, what duties did you then undertake?

A. I actually took up the duties of Director of the Chancery.

Q. 15. Who had been the Director prior to that time?

A. Mr. Nikiforoff.

Q. 16. At the outset were you given the official title of Director?

A. In July nineteen hundred and sixteen Mr. Nikiforoff left on leave of absence; then he became a member of the Russian Senate, and from that time until the third of December nineteen hundred and sixteen, except for a month, when the Vice Minister of Finance, Mr. Theodosieff was officially in charge. I was actually in charge of the Chancery until I was officially nominated.

Q. 17. How long did you stay in charge as Director?

A. Until November nineteen hundred and seventeen.

Q. 18. Shortly after, or about the time of the bolshevik revolution?

A. Yes.

Q. 19. Do I understand that you ceased to be that at the [fol. 389] time of the bolshevik revolution?

A. Yes, as soon as they got actually in power.

Q. 20. And you went out when the bolsheviks went in?

A. Yes."

Upon cross-examination he testified:

"X Q. 344. Do I correctly understand that you had no connection whatever with the Credit Chancery from about November seventh, nineteen hundred and seventeen, new style, the date of the Bolshevik revolution?

A. Yes.

X Q. 345. You had no connection with it after that date?

A. No.

X Q. 346. You don't know what happened to the Credit Chancery after that date?

A. No, I don't.

X Q. 347. What was the condition of affairs in the Credit Chancery about the time you left?

A. In what respect?

X Q. 348. As to whether or not business was going on as usual?

A. No, business had been stopped immediately after the Bolsheviks got into power, and I think the staff did not restart work for about two months or even more.

X Q. 349. But you were not there at that time?

A. I was not there at the time. I have been going to my office until, I think, the middle of November, about the twentieth of November, when I was warned that I would be arrested if I went there any more. At the same time was published the Soviet decree dismissing me.

X Q. 350. Just before and about the time you left, was business going on in the ordinary fashion at the Chancery?

A. Until the staff struck, yes.

[fol. 390] X Q. 351. The staff struck about the seventh of November?

A. New style—a few days later, perhaps two days after."

In the same case Constantin Rodin testified upon deposition in Moscow, Russia, in August 1934 as follows:

Q. 1. Please give your full name and residence, if you have not already done so.

A. Rodin, Constantin Fedorovich, U. S. S. R., City of Moscow, Ostojenka Street, No. 46, Apt. 4.

Q. 2. What position, if any, did you hold in the Ministry of Finance of the Russian Government during the war?

A. During the war from June 1915 I was in charge of the Foreign Department of the Credit Chancery of the Ministry of Finance.

Q. 3. When did you first enter the employ of the Ministry of Finance and in what position?

A. I was attached to the Ministry of Finance from 1903 as a candidate official.

Q. 4. What position, if any, did you occupy in the Ministry of Finance of the Russian Government in January and February 1916?

A. In January and February 1916, I was in charge of the Foreign Department of the Credit Chancery.

Q. 5. How long did you hold such position?

A. I occupied the position of chief of the Foreign Department from June 1915 until the October Revolution.

Q. 6. Please state in detail the duties which you performed in the Ministry of Finance in the position occupied by you. [fol. 391] in and after January 1916.

A. As Chief of the Foreign Department I was in charge of the general supervision over activities which had as a purpose the supplying of the State institutions and private firms and persons with foreign currency for payments to be made on the matters approved by special commissions or by the Director of the Credit Chancery or by the Minister of Finance. In addition thereto, I supervised the activities of the purchase of foreign currency for export; I investigated questions of supply and demand of foreign currency and the rates of exchange of the ruble from day to day; I drafted certain measures in connection with foreign currency; I worked out certain measures to be adopted in connection with foreign currency, such measures being suggested by the Minister of Finance and by the Director of the Credit Chancery; I supervised the preparation and collection of data concerning the Foreign Department for the International Finance Conferences; I participated either personally or by substitutes in various Commissions, including the Foreign Currency Commission (Valuta Committee); I was the chairman of the Accounting Division and carried out administrative functions concerning the organization of the work, of said division."

In the same case Serge G. Feodossief testified on deposition in my hearing in April 1932 at Paris, France, as follows:

"Q. 1. Mr. Feodossief, will you give your present occupa- [fol. 392] tion, please?

A. I have no occupation at all now.

Q. 2. What was your occupation in Russia from nineteen hundred and fourteen on?

A. I was the head of the Chancery of General Affairs (as we called it in Russia) of the Ministry of Finance from April, nineteen hundred and fourteen, until the beginning of October, nineteen hundred and sixteen, and in August—I think it was the eighth of August, nineteen hundred and sixteen—I was appointed Vice-Minister of Finance, and at the same time I was left as Manager of the Chancery of General Affairs of the Ministry of Finance until October tenth, nineteen hundred and sixteen, when I was moved—remaining Vice-Minister of Finance—I was moved to the post of Manager of

the Chancery of Credit, where I remained until November thirtieth of the same year; and at that date I was appointed, as we call it in Russia, 'Comptroller of the Empire' and member of the Council of Ministers.

Q. 3. How long did you retain your post as Comptroller of the Empire?

A. Until the Revolution.

Q. 4. Which one?

A. Until the first Revolution, until the first of March nineteen hundred and seventeen, that is, the first of March old style, which is on the fourteenth of March new style.

Q. 5. When did you leave Russia?

A. Oh, I left Petrograd for Siberia at the end of nineteen hundred and seventeen, and I left Siberia at the beginning of nineteen hundred and twenty.

[fol. 393] Q. 6. Have you returned to Russia since then?

A. No, never.

. . . . . .

Q. 13. What was the Chancery of Credit?

A. The Chancery of Credit was the chief Department for the service of Russian loans at first, and all the payments for the Russian loans or contractual obligations on Russian loans were made through the Chancery of Credit, and a special estimate was yearly presented to the highest body of the Russian State, the Duma and the Council of the Empire, and all these sums necessary for the contractual obligations of the Russian States included therein. That was its first duty. Then, all contracts for new loans passed through the Credit Chancery, and all questions connected with foreign exchange. In the time before the war we had in Russia a free market for foreign exchange, as practically in every other country, and the dealings in foreign exchange were chiefly made through the Russian private banks; but still, sometimes the Government had to step into the foreign exchange market in order to keep the rate of exchange of the rouble more or less stable. When the rouble rose or the rouble fell, the Chancery of Credit (when this was not done by the other private banks) appeared on the market and either bought the exchange, the foreign exchange, in the one case, or sold it in the other case, and so kept the rate of the rouble stable. That was one of the important duties of the Credit Chancery before the War, and it was somewhat [fol. 394] changed by the conditions of the war, but re-

mained more or less the same during the war itself. Then the third duty of the Credit Chancery was to keep the account of loans made by the Government to private persons, to official bodies, or to anybody who might take money from the Government. All these loans were booked in the Credit Chancery, and the Chancery had to see that all the conditions of the loan were fulfilled, the payments due, made, and so on. Then the fourth duty of the Chancery was the supervision of the private banks, of the Banks of short-term credit (as we called them in Russia), and of the Banks of long-term credit, or Land Banks. I think these duties were the chief among the duties of the Credit Chancery.

Q. 14. Who was head of the Credit Chancery at the beginning of the war?

A. It was Mr. Nikiforoff.

Q. 15. Who succeeded him as head of the Credit Chancery, and when?

A. I succeeded him as head of the Credit Chancery; I think about the end of September, or the very beginning of October, he was appointed Senator and left the Credit Chancery, and I, being Vice-Minister of Finance at that time and managing the Chancery of General Affairs, was moved to the Credit Chancery.

Q. 16. How long did you remain head of the Credit Chancery?

A. Until the time when I was appointed Comptroller of the Empire, that was the thirtieth of November nineteen hundred and sixteen."

[fol. 395] 2. I have examined the filed papers in this Court in the actions in which judgment was affirmed by the Circuit Court of Appeals in 21 F2 396, 406, under the title State of Russia v. Lehigh Valley R. Co., which are filed in the Clerk's Office, under the file numbers L19-2 and L19-3. Orders signed in this Court in the said actions by Hon. Francis A. Winslow, United States District Judge, on December 21, 1927, recite that the defendant therein paid to the Clerk of the Court on December 19, 1927, the respective judgments in the amount of $980,431.24 in Action No. 1, L19-2, and in the amount of $3,673.38 in Action No. 2, L19-3. A copy of the order in Action No. 1 as signed by Judge Winslow on December 21, 1927, is hereto attached marked Exhibit 24. Attached to the original order in said file is an original letter dated December 20, 1927, signed by Robert E. Olds

as Acting Secretary of State, and an original letter dated February 19, 1923, signed by Charles E. Hughes, as Secretary of State. Copies of the said two letters are hereto annexed marked Exhibits 25 and 26 respectively.

3. I attended in the Chambers of Judge Winslow on December 21, 1927, at the time said orders were signed by him. There were also present, among others, Mr. Serge Ughet, Financial Attache to the Russian Embassy; Frederic R. Coudert, Sr., one of the attorneys for the State of Russia in the action; and Edward B. Levy, a member of the New York Bar. Before the signature of the orders Mr. Levy stated to the Court in my hearing that he represented Howard B. Zonis of Boston; that his client owned obligations of the Imperial Russian Government of a principal amount of [fol. 396] 1,000,000 rubles; and that before the moneys in court belonging to the State of Russia should be paid out, he desired time in which to perfect an attachment on or an equitable sequestration of said moneys to secure payment of his client's claim. Judge Winslow stated that the idea of impounding this fund in such a way was unthinkable; that the fund was Government property payable to a diplomatic officer in accordance with a judgment rendered; and that the Court had no option but to sign the order if it was in due form. Mr. Ughet said that pursuant to his arrangement with the Treasury of the United States the money paid to him upon the judgments pursuant to the orders to be signed would, after payment of his expenses, be turned over to the Treasury for application upon the indebtedness of the Provisional Russian Government to the United States. Following this discussion Judge Winslow signed the orders.

4. I have read a certified copy of Dispatch No. 1146 from Loy W. Henderson, Esq., American Charge d'Affaires ad Interim at Moscow, USSR, dated December 11, 1935, with the papers thereto attached, copies of all of which were served on defendant's attorneys by the United States Attorney on February 1, 1936. I was personally familiar at the time with the sending of all the communications of which copies are included in the said papers numbered 1 to 7 inclusive.

The enclosures numbered 1, 4, 5 and 7 related exclusively to an action then and now pending in the New York State courts brought in the name of P. V. Baranowsky Company, Ltd. against the defendant to recover $1,707,169.86 formerly

[fol. 397] standing with the defendant in the name of Russo-Asiatic Bank. Neither the said litigation nor the said Russo-Asiatic Bank account has any relationship whatever to the above-entitled action or the Section Etrangere Ministere des Finances account involved herein, and defendant's attorneys are at a loss to understand why these documents should be interposed by the United States Attorney as a defense upon the motion to dismiss this action.

The enclosures in said papers numbered 2, 3 and 6 relate to negotiations had by or on behalf of the defendant with representatives of the Soviet Government prior to the assignment by that Government to the United States on November 16, 1933, of its claim to the Section Etrangere Ministere des Finances account. These negotiations, as the said enclosures show, contemplated the settlement of claims generally as between the Soviet Government and the defendant, including the claim of the Soviet Government to the said account. It is submitted that, even if relevant to the issues on the pending motion to dismiss, any reference to the settlement negotiations in connection with the determination of such issues is quite as improper as if such negotiations were had directly between plaintiff and defendant.

Ralph M. Carson.

Sworn to before me this 13th day of February, 1936. Wm. H. Bruder, Notary Public, Bronx County No. 122.

[fol. 398] DEFENDANT'S EXHIBIT 24

At a Stated Term of the United States District Court for the Southern District of New York, held at the Federal Court House and Post Office Building in the Borough of Manhattan, City of New York, on the 21 day of December, 1927.

Present: Hon. Francis A. Winslow, Judge.

Action No. 1. L. 19/2

THE STATE OF RUSSIA, Plaintiff,

against

LEHIGH VALLEY RAILROAD CO., Defendant

A final judgment having been recovered by the plaintiff herein against the defendant herein bearing the date the

8th day of July, 1925, which judgment was affirmed by the Circuit Court of Appeals for the Second District under date of August 14, 1927, and the petition of the defendant for a writ of certiorari to the United States Supreme Court to review said judgment having been denied under date of December 12th, 1927; and the defendant Lehigh Valley Railroad having paid to the Hon. Alexander Gilchrist, Jr., the Clerk of this Court, on December 19th, 1927, the amount [fol. 399] of said judgment with interest and costs to said date in the total sum of $980,431.24.

Now upon all the proceedings heretofore had in this action and upon the opinion of the Court of Appeal for the Second Circuit rendered herein, and upon motion of Coudert Brothers, attorneys for the plaintiff herein, it is

Ordered, that the Hon. Alexander Gilchrist, Jr., the Clerk of this Court, be and is hereby directed to pay over the amount of said judgment with interest and costs as aforesaid in the total sum of $980,431.24 upon behalf of the plaintiff, to Serge Ughet, as the Financial Attache of the Russian Embassy, duly recognized as such by the Department of State of the United States Government.

Francis A. Winslow, U. S. D. J.

200,000.00.
780,431.24.

[fol. 400] DEFENDANT'S EXHIBIT 25

December 20, 1927.

To the United States District Court, Southern District of New York:

This is to certify that Mr. Serge Ughet, the Financial Attache of the Russian Embassy, is recognized by the Government of the United States as the custodian of the property of the State of Russia in the United States, and that the status of said Serge Ughet with this Government has not been altered since the date of the letter of the Honorable Charles E. Hughes, Secretary of State of the United States, to the Honorable Lindley M. Garrison of February 19, 1923.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the Department of State to be affixed

this twentieth day of December, one thousand nine hundred and twenty-seven.

Robert E. Olds, Acting Secretary of State.

RFK: EBS.
EE.
311.6154 L 52/21.

[fol. 401] DEFENDANT'S EXHIBIT 26

Department of State, Washington

Feb. 19, 1923.

MY DEAR JUDGE GARRISON:

In reply to the inquiry contained in your letter of February 17, 1923, and to certain additional inquiries made orally today by your partner, Mr. Raoul E. Desvernine, I have to inform you that the so-called Provisional Government of Russia, which succeeded to authority upon the abdication of the Czar, was recognized by the Government of the United States on March 22, 1917. On July 5 of the same year Mr. Boris Bakhmeteff was received by the President as the Ambassador Extraordinary and Plenipotentiary of the newly recognized Government.

Mr. Bakhmeteff continued to be recognized as the Ambassador of Russia to the United States until June 30, 1922. The custody of the property of the Russian Government in this country, for which Mr. Bakhmeteff has been responsible, was, after the date of his retirement, considered to vest in Mr. Serge Ughet, the Financial Attache of the Russian Embassy, whose diplomatic status with this Government was not considered to be altered by the termination of the Ambassador's duties.

In answer specifically to your questions, I may say that the United States has not recognized any other Government in Russia since the fall of the Provisional Government, to which reference is made above.

The regime now functioning in Russia and known as the Soviet Regime has not been recognized by the United States.

Sincerely yours, (Signed) Charles E. Hughes.

Hon. Lindley M. Garrison, 24 Broad Street, New York City.

[fol. 402] DEFENDANT'S EXHIBIT 27

The National City Bank of New York

New York, July 18, 1916.

In replying please quote initials JTC.

Mr. G. M. P. Murphy, Vice-President, The Guaranty Trust Company, New York, N. Y.

DEAR SIR:

In accordance with request of our Vice-President, Mr. Perkins, I take pleasure in advising you that the following are the conditions governing the account on our books in the name of "Section Etrangere du Minister des Finances de Russie:

We credit interest monthly at the rate of 2% per annum on Credit balances.

We debit monthly a commission of ⅛% on all debits, or disbursements appearing on the debit side of the account.

This I trust will give you the information you require and enable you to conform your conditions with our own as regards this particular account.

Respectfully, J. T. Cosby, Manager.

JTC: JTS.

[fol. 403] DEFENDANT'S EXHIBIT 28

The National City Bank of New York

New York, July 19, 1916.

In replying please quote initials JTC.

The Guaranty Trust Company of New York, 140 Broadway, New York, N. Y.

Mr. W. P. Conway

DEAR SIR:

Referring to your conversation with Mr. Perkins, and also telephone conversation of this afternoon, I take pleasure in handing you herewith duplicate copy of the latest list of signatures which we hold of those authorized to check

against the account of the Ministere des Finances Section Etrangére, Petrograd, on our books.

Respectfully, J. T. Cosby, Manager.

JTC:JTS.
Enclosure.

[fol. 404] DEFENDANT'S EXHIBIT 29

Petrograd, Septembre 1915.

(Seal)

Ministère des Finances

Chancellerie des Opérations de Crédit

Section Etrangère

MESSIEURS,

Nous avons l'honneur de vous faire part que Mr. Putzberg, Directeur de notre Section Etrangère après un service de plus de 40 ans quitte son poste et se retire dans la vie privée.

Mr. V. Pehmoeller quittant de même la Section Etrangère pour être nommé fonctionnaire en missions spéciales près notre Ministère des Finances ne signera plus pour le Directeur de la Section Etrangère.

En remplacement de Mr. W. Putzberg Mr. C. Rodine est nommé Chef de la Section Etrangère et signera en cette qualité.

Les lettres de la Section Etrangère porteront dorénavant deux signatures savoir celle du Directeur de la Chancellerie des Opérations de Crédit ou celle du Vice-Directeur ainsi que celle du Chef de la Section Etrangère.

Mr. C. Rodine est en même temps autorisé à signer pour le Directeur de la Chancellerie des Opérations de Crédit.

Les effets et les lettres de crédit créés par la Section [fol. 405] Etrangère porteront deux signatures, savoir celle du Chef de la Section Etrangère et celle du Contrôleur.

En cas d'absence de Mr. Rodine la signature pour le Chef de la Section est confiée à Mr. A. Boyarinsky et à Mr. C. Taurit.

Mr. A. Bauer ne signera plus pour le Contrôleur.

Mr. D. Grimm continuera à signer en qualité de Contrôleur.

Mr. C. Tschoubakoff de même que Mr. A. Deviatkine signeront pour le Contrôleur.

Veuillez prendre note des signatures ci-après et agréez, Messieurs, nos salutations distinguées

Le Directeur de la Chancellerie des Opérations de Crédit

D. Nikiforoff. Mr. C. Rodin signera: C. Rodine. Mr. A. Boyarinsky signera: A. Boyarinsky. Mr. C. Taurit signera: C. Taurit. Mr. D. Grimm signera: D. Grimm. Mr. C. Tschoubakoff signera: C. Tschoubakoff. Mr. A. Deviatkine signera: A. Deviatkine.

[fol. 406] DEFENDANT'S EXHIBIT 30

[Seal]

Ministry of Finance

Chancery of Credit

Foreign Section

Petrograd September 1915.

GENTLEMEN:

We have the honor to inform you that Mr. Putzberg, Chief of our Foreign Section, after a service of more than forty years, is resigning his post and retiring to private life.

Mr. V. Pehmoeller, likewise resigning from the Foreign Section to become a representative of our Ministry of Finance on special mission, will no longer sign for the Chief of the Foreign Section.

In the place of Mr. W. Putzberg, Mr. C. Rodine is designated Chief of the Foreign Section and will sign in that capacity.

The letters of the Foreign Section will henceforward bear two signatures, i. e. that of the Director of the Credit Chancery or that of the Vice-Director, as well as that of the Chief of the Foreign Section.

Mr. C. Rodine is at the same time authorized to sign for the Director of the Credit Chancery.

Drafts and letters of credit issued by the Foreign Section will bear two signatures, that of the Chief of the Foreign Section and that of the Comptroller.

In the event of Mr. Rodine's absence, the signature for the Chief of the Section is entrusted to Mr. A. Boyarinsky and to Mr. C. Taurit.

[fol. 407] Mr. A. Bauer will no longer sign for the Comptroller.

Mr. D. Grimm will continue to sign in the capacity of Comptroller.

Mr. C. Tschoubakoff as well as Mr. A. Deviatkine will sign for the Comptroller.

Kindly take note of the signatures following and accept, gentlemen, our respectful greetings.

The Director of the Credit Chancery

D. Nikiforoff. Mr. C. Rodin will sign: C. Rodine. Mr. A. Boyarinsky will sign: A. Boyarinsky. Mr. C. Taurit will sign: C. Taurit. Mr. D. Grimm will sign: D. Grimm. Mr. C. Tschoubakoff will sign: C. Tschoubakoff. Mr. A. Deviatkine will sign: A. Deviatkine.

[fol. 408] DEFENDANT'S EXHIBIT 31

Petrograd, le 6/19 Juillet 1916.

Ministère Des Finances

Chancellerie

Des Opérations de Crédit

Section Etrangère

T

Guaranty Trust Company, New York

MESSIEURS,

Nous vous prions de porter au crédit du compte que vous voudrez bien ouvrir dans vos livres au nom de la Section Etrangère les:

$.25.000.000.—dont la National City Bank de votre ville nous avise vous avoir fait le versement.

Vous voudrez bien nous confirmer cette opération et que notre compte chez vous sera producteur d'intérêts créditeurs de 2% l'an.

Nous vous remettons ci-joint une circulaire vous portant les specimens de nos différentes signatures, et nous vous enverrons prochainement notre chiffre télégraphique.

Recevez, Messieurs, nos salutations distinguées.

Le Directeur C. Rodine.

Le Chef de la Section Etrangère

A. Deviatkine.

Adresse pour Finetrange. télégrammes.

[fol. 409] DEFENDANT'S EXHIBIT 32

Petrograd, 6/19 July 1916.

Ministry of Finance

Credit Chancery

Foreign Section

T

Guaranty Trust Company, New York

GENTLEMEN:

We beg you to carry to the credit of the account which you will kindly open on your books in the name of the Foreign Section the $25,000,000 which National City Bank of your city informs us that it remitted to you.

You will kindly confirm this transaction to us and that our account with you will be credited with interest at 2% per annum.

We transmit herewith a circular bearing specimens of our different signatures and we shall forward in the near future our telegraphic code.

Please accept assurances of our esteem.

For the Director C. Rodine.

For the Chief of the Foreign Section.

A. Deviatkine.

[fol. 410] DEFENDANT'S EXHIBIT 33

September 8, 1916.

Ministere Des Finances, Chancellerie, Le Directeur C. Rodine, Petrograd, Russia.

DEAR SIR:

We beg to acknowledge receipt of your favor of July 19, with regard to $25,000,000. deposit made by the National City Bank, which amount was credited under advice to an account in our books entitled "Section Etrangere Ministere des Finances."

We find enclosed in your favor circular letter showing specimen signatures of various Directors who are authorized to sign against this account in the withdrawal of funds. We are pleased to note that under instructions of circular letter dated September 1915 that letters of the foreign section will bear two signatures.

We have received the telegraphic code referred to in your favor of July 19th, and we will make payment from the funds to the credit of the above mentioned account on telegraphic advice when signed by Section Etrangers Ministere des Finances, provided the code word used checks correctly.

Yours very truly, —— ——, Treasurer.

NDP/JWB-102.

[fol. 411] DEFENDANT'S EXHIBIT 34

Credit Department

Section Etrangere Minister Des Finances—Russian Govt.

Officer will check department concerned
Auditing
Bond
√Bookkeepers
√Collection
Coupon
√Credit
Fifth Ave. Office
Filing

March 19th, 1917.

Spoke to Mr. Lamont and Mr. W. C. Potter after our Executive Committee meeting today to ascertain whether, in their judgment, it would be advisable for us to receive special authority from the new Government in Russia before disbursing funds on deposit here. It was

√Foreign
Legal
Loan
Mailing
Mail Tellers
√Paying Teller
√Publicity
Purchasing
Receiving Teller
Registration
Reorganization
Securities
Stenographers
Stock Bookkeepers
Telephone
Transfer
Trust

their opinion that we should continue to make disbursements under our previous instructions and without additional authority. However, when I suggested speaking to Mr. Ughet they thought it would be a good idea for me to do so.

I talked with Mr. Ughet, who advises me that we should absolutely continue to make payments in accordance with instructions, and said that he would say so to me in his official capacity. I have accordingly issued instructions for us to make payments of our Russian Government funds as heretofore.

GMPM.

[fol. 412] UGHET ASSIGNMENT

No. 6257

UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, Greeting:

I Certify That the document hereunto annexed is a photostatic copy of an assignment dated August 25, 1933, made to the United States of America, its successors, and assigns, by Serge Ughet, as Russian Financial Attache and Custodian of the Property of the Russian Government in the United States, acting for and on behalf of the State of Russia. The original of this assignment is in the files of the Department.

In testimony whereof, I, Wilbur J. Carr, Acting Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, in the District of Columbia, this twenty-fourth day of December, 1935.

Wilbur J. Carr, Acting Secretary of State, by C. E. MacEahran, Chief Clerk. (Seal Department of State, United States of America.)

[fol. 413] Assignment, Annexed to Exhibit 35

Know All Men by These Presents that I, the undersigned, Serge Ughet, as Russian Financial Attache and Custodian of the Property of the Russian Government in the United States, acting for and on behalf of the State of Russia, for and in consideration of good and valuable considerations by the United States of America to the State of Russia paid, the receipt of which is hereby acknowledged, have assigned, transferred, set over and delivered and by these presents do assign, transfer, set over and deliver unto the United States of America, its successors and assigns, to its and their own proper use and benefit forever, all property, of whatsoever nature and description, in the United States belonging to the State of Russia, together with all claims and demands of every nature and description, whether legal or equitable, existing in favor of the State of Russia in the United States, or against any person, firm or corporation in the United States, or arising out of any contract or agreement or transaction in the United States or otherwise, including therein among others the following property and claims:

(1) Claim for approximately $4,976,722.78 with interest for a balance of the Russian Government with the Guaranty Trust Company of New York.

(2) Claim for approximately $15,000.00 against the Guaranty Trust Company of New York arising out of a contract with the Morton Truck & Tractor Company.

[fol. 414] (3) Claim for approximately $46,584.18 balance on deposit with the New York Trust Company on account of a bond issue of the Vladikavkas Railway Company.

(4) Claim for approximately $11,680.00 against the said New York Trust Company on account of a balance of a payment made by the Russian Financial Attache on or about September 10, 1918 in connection with the same bonds.

(5) Claim for approximately $140,000.00 against the National City Bank of New York on account of a payment made to the said bank regarding certain shoes ordered for working men and employees of the Vladikavkas Railway Company.

(6) Claim for approximately $1,050,000.00 with interest against the Curtis Aeroplane & Motor Company.

(7) Claim for approximately $384,118.07 with interest for moneys due from the Canadian Pacific Railway Company under contracts with the Russian Government.

(8) Claim for approximately $1,412,532.35 with interest on account of the amounts due by the United States Shipping Board for the requisition of Hulls Nos. 6 and 7 of the Russian Volunteer Fleet, action in connection with which is now pending in the United States Court of Claims No. 69 A.

(9) Claim for the sum of approximately $218,750.00 originally deposited with the Guaranty Trust Company as [fol. 415] escrow money on Hull No. 6 under the contract for the purchase of said hull by the said Russian Volunteer Fleet.

(10) Claim for the sum of approximately $23,643.75 on account of a balance due by the United States Shipping Board in connection with the charter of certain steamers of the said Russian Volunteer Fleet.

The foregoing list of claims is not intended to be exclusive. It is the intention of this assignment to transfer to the United States of America all property, rights and claims having a situs in the United States formerly belonging to either the Imperial Russian Government or the Provisional Russian Government.

Excluding from this assignment, however, the right, title and interest of the said State of Russia in and to the claim, demand or cause of action involved in the pending suit in equity in the United States District Court for the Southern District of New York, No. E 46-6, entitled "State of Russia, plaintiff, against Bankers Trust Company and National City Bank of New York, defendants."

In Witness Whereof, the said Serge Ughet as Russian Financial Attache and Custodian of the property of the Russian Government in the United States, acting for and on behalf of the State of Russia, has hereunto set his hand and seal this 25th day of August, 1933.

Serge Ughet, As Russian Financial Attache and Custodian of the Property of the Russian Government in the United States, Acting for and on behalf of the State of Russia.

[fol. 416] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L. 59, p. 80

UNITED STATES OF AMERICA, Plaintiff,

against

GUARANTY TRUST COMPANY OF NEW YORK, Defendant

New York, October 13, 1936.

Before Hon. Francis G. Caffey, District Judge

Appearances omitted

OPINION

[fol. 417] The Court: (Orally): What I shall say will be divided into three parts. I shall deal first with certain preliminaries; secondly, with the facts; thirdly, with the law.

What I shall include in the preliminaries is, in a sense, merely introductory. The design of it is two-fold. In part it is to point out what is not in controversy between the parties. In part it is to remove from further consideration what is irrelevant.

It is conceded by counsel, as I understand them,—and if not conceded it is clearly true,—that if the statute of limitations had run against the assignor prior to the date of the assignment, then by the assignment the assignee took nothing. Likewise, as I understand, it is agreed between counsel,—and if not so agreed it is clearly true,—that the question of limitations here turns on the six-years statute of New York.

The Soviet Government was recognized by the political branch of our Government and the assignment was made by it to the United States on November 16, 1933. The consequence is that the question of limitations turns on whether or not the statute had been kept running, or it continued to run, for a period of six years preceding that date. That is to say, it must have started to run as early as 1927.

The Imperial Russian Government was overthrown and the Kerensky regime took charge of the Government of the

Russian State in March, 1917. Our Government recognized the Kerensky Government in that month. That recognition continued without interruption down to November 16, 1933. The Soviet Revolution occurred in November, 1917. The [fol. 418] Soviet Government was not recognized by our Government until November 16, 1933.

There are two officials with whom we are particularly concerned in this case. One is Bakhemeteff and the other is Ughet. For the moment I shall disregard Ter-Assatouroff.

Bakhemeteff was recognized by our Government as Ambassador from the Russian State on July 15, 1917. He continued to be so recognized until June 30, 1922, when he resigned. He was absent from the United States, in attendance on the Peace Conference in Paris, from December 3, 1918, to July 31, 1919.

Ughet was recognized by our Government as the representative of the Ministry of Finance of the Imperial Government on January 2, 1917. He was appointed Financial Attache by the Kerensky Government in April, 1917. In that month he was recognized as such by our Government. His recognition by our Government in that capacity continued without interruption down to November 16, 1933. During the period from December 3, 1918, to July 31, 1919, Ughet was also recognized by our Government as Chargé d'Affaires of the Russian State. Between June 30, 1922, and November 16, 1933, he acted as Financial Attache and Custodian of Russian property in the United States. He was accorded diplomatic status by our Government and was recognized during that period as the sole representative in the United States of the Russian State.

The account in suit between the defendant and the Russian State at some time prior to November, 1917, had a bank credit of approximately five million dollars, owing by the [fol. 419] bank to the Russian State. Subsequent to the Soviet Revolution there were no accretions to or withdrawals from that account, except that between that revolution and February 25, 1918, there were a few credits of additional bank interest.

On December 27, 1917, the Soviet Government made a decree confiscating to itself all credits in Russian banks. At that time the defendant claims that it had to its credit in Russian banks something like nine million dollars. That nine million dollars was confiscated by the Soviet Government, and, as I understand the decree, the Soviet Govern-

ment undertook in that confiscation decree itself to carry in the bank of the Russian State the credits the defendant then had in Russian banks in the sum of approximately nine million dollars.

At the time of the confiscatory decree, when the Russian State had to its credit with the defendant the five million dollars, certain Russian banks had to their credit with the defendant sums, carried in separate accounts, which aggregated about $2,226,000. The two added together approximated $7,226,000. The consequence is that, as of that date, assuming that the amount owing by the defendant to the Russian State and the amount previously owing by the defendant to Russian banks were set off against the amount owing to the defendant originally by banks in Russia taken over by the Russian State, the overplus left owing to the defendant would be approximately a million and three-quarters dollars. That, according to the claim of the defendant, is a balance which, as the result of the consolidation of the accounts and the set-off, remained owing as of that date to the defendant.

Two actions taken by the defendant bank with respect [fol. 420] to the $5,000,000, the bank deposit credit involved in this suit, are undisputed. The first is that on February 25, 1918, the bank applied that balance as against the $9,000,000 which it claimed was owing to it and made entries to carry out that application, so that on its books in this particular deposit account there was nothing whatsoever left owing to the Russian State. The second is that on March 14, 1918, the directors of the bank approved the action of its officers theretofore in closing the deposit account involved in the present suit in the way I have described.

There is no controversy between the parties that such action on the part of the bank would not be sufficient to set the statute of limitations running unless then, or if later, as of such subsequent date, in order to initiate the running of the statute of limitations, there were notice given to an authorized representative of the Russian State. The defendant contends that long preceding 1927 it gave to the Russian State notice of unequivocal repudiation of liability; also that such notice was given both to Bakhmeteff and to Ughet at several different dates, all of which preceded June 30, 1922. If so, and those notices were effective, then plainly they were given a sufficient length of time ahead of the assignment to the plaintiff of the account in suit on Novem-

ber 16, 1933, for the six-years statute completely to have run.

The defendant also contends that there was no suspension of the running of that period of limitation after it had commenced to run.

As I have indicated heretofore, I shall omit for the moment any discussion of Ter-Assatouroff or of notice to him or [fol. 421] of his status. In consequence, the substantial controversies are three in number.

As I have said, it is indisputably shown that the defendant bank did outright and unequivocally repudiate liability as early as February 25, 1918. Though this be not conceded by the plaintiff, it is established by the evidence without dispute. I regard it as plain that actual, unequivocal repudiation of liability occurred as early as February 25, 1918.

Accordingly, as I see it, the three questions are, first, whether notice of such repudiation was given; secondly, if so, whether it was given to a representative of the Russian State in such manner as to bind the Russian State; and, thirdly, if the statute started running on that notice being given, whether it was suspended before the six-years period had elapsed. The answer to these questions turns on issues both of fact and of law.

Let us now examine the facts. Is there a triable issue of fact? Or are the facts, insofar as they are material or it is essential for them to be determined, without serious or substantial dispute?

In discussion I shall deal, first at least, with instances relating to or resting on the consolidation of the accounts between the bank and the State of Russia, including the taking of the setoff by the bank; that is to say, in considering the matter of notice at this stage I shall deal with such instances.

As I have already indicated, it is conceded by the defendant that, in order to set limitations running by means of repudiation of liability, the repudiation must be unequivocal. It follows that notice must be of a repudiation of liability that was unequivocal.

[fol. 422] Save as a background, I shall disregard the negotiations and transactions which preceded February 25, 1918. It is probable that none of them constituted unequivocal repudiation of liability, though it is not necessary at the moment definitely to determine that question. An illustration, and I believe a fair illustration, of the occurrences preced-

ing February 25, 1918, was the Sabin letter to Ughet of December 12, 1917. In that letter Mr. Sabin said that for the present the bank would continue to hold the deposit balance as now. That, as it seems to me, was not an unequivocal denial of liability by the bank.

Was notice of unequivocal repudiation of liability given by the bank on or after February 25, 1918? There are two instances of notice to Bakhmeteff and four of notice to Ughet after that date, which I shall discuss. I may say in the beginning, however, that I am persuaded by the proof that such notice of unequivocal repudiation of liability was given by the bank both to Bakhmeteff and to Ughet. I see no escape from reaching that conclusion; nor do I see any substantial or serious dispute in the testimony on that issue.

Let us now take up Bakhmeteff.

As I see it, the oral testimony of Bakhmeteff himself is definite and without dispute that such notice was given to him. Moreover, the testimony which I have in mind in making this finding shows notice that the accounts had been consolidated and a setoff had been taken by the bank. Mr. Polk, at the instance and request of Mr. Bakhmeteff, sought information as to the position of the bank. Bakhmeteff says unequivocally and plainly that he knew that the bank [fol. 423] had refused to surrender. He unambiguously says, further, that he knew that the bank had taken the setoff.

It would have been strange indeed if Bakhmeteff had not known of the setoff. He testified that he was in constant contact with Ughet. As will soon be seen, Ughet knew that the setoff had been taken and payment refused. Bakhmeteff did not look after details. He left those to Ughet. He dealt through Ughet. It would have been almost beyond belief if he had testified,—and he has not testified,—that Ughet never conveyed to him the information that a setoff had been taken.

The efforts of Mr. Polk to get the bank credit available for uses of the Russian State under the direction of Bakhmeteff were made at the instance and request of Bakhmeteff. Moreover, it is uncontroverted that Mr. Polk informed Bakhmeteff that his efforts had resulted in failure.

Next, did the notice come to Bakhmeteff as early as 1927 or earlier? True, in his testimony he says that he thinks that Mr. Polk gave him this information in 1917 or 1918. The probability, from the proof, is that the information of

the repudiation was given to him by Mr. Polk preceding December 3, 1918, when he left this country to go to Paris. However, certainly it was given to him preceding June 30, 1922, because he says squarely that he knew it as Russian Ambassador and he ceased to be Russian Ambassador on that date.

So through the first batch of proof I have mentioned it seems to me conclusively established that preceding June 30, 1922, Bakhmeteff had notice of outright repudiation of liability by the bank.

[fol. 424] Second, an unambiguous piece of proof of notice of repudiation, notice of repudiation because the setoff had been taken, is contained in a letter of September 23, 1921, from Murray to Bakhmeteff. At the instance of Mr. Bakhmeteff, Mr. Murray, of counsel for the Russian Embassy, had undertaken negotiations,—not the first negotiations it should also be noted,—to get the bank balance available for the Russian State under Bakhmeteff's representation of that State. It is not necessary to go into the details of these, because counsel, as the result of his efforts, failed again, as Mr. Polk had failed and as Mr. Ughet had failed, to get the money available for Bakhmeteff, and Mr. Murray by that letter of September 23, 1921, definitely so informed Bakhmeteff.

As I have heretofore said, in the case of Ughet there are four separate pieces of proof which convince me that he also had the same type of notice, definite and unequivocal notice, of repudiation of liability by the bank and had that notice preceding June 30, 1922.

The indications are that all of those four instances occurred during the period when Ughet was Chargé d'Affaires. If so, they were given when he stood in the place of the Ambassador. I am not perfectly certain, however, as to one of those instances. Nevertheless, it is clear beyond peradventure that at least some of those notices were given to Ughet during the time he was Chargé d'Affaires.

The first notice given to Ughet, which is indisputably established, was by Breton. He informed Ughet that the bank [fol. 425] refused to transfer the account because it had taken it as a setoff. That was probably prior to May 7, 1918; but if not so early, then it was certainly prior to June 15, 1919. That is an instance that may or may not have occurred during the period when Mr. Ughet was Chargé d'Affaires. The reason I say that notice was probably

prior to May 7, 1918, is that, under that date, Penny, an official of the Federal Reserve Bank of New York, sent a letter to the Treasury Department at Washington in which he recited this notice of repudiation as having been given by Breton to Ughet.

The second instance was at the socalled Fulton conference, in Fulton's office. At that time a Protective Committee, of which Fulton was chairman, was seeking to secure the bank credit to be applied towards the payment of principal of a loan made to the Imperial Russian Government in 1916 by American banks in the sum of $50,000,000. Ughet attended the conference. At the conference Stanley stated, in the presence of Ughet, that Ughet had previously known that this bank credit was not available for use of the Russian State, because the Russian Government owed the defendant bank a sum in excess of the $5,000,000. The principal of the loan matured June 18, 1919. The conference appears to have been held on June 16, 1919. It is immaterial, however, to discuss on which of the two dates the notice was given. It is clear that it was given on or prior to June 18, 1919. What Stanley says he announced to Ughet at the conference is corroborated by the testimony of Sargent, who was present.

I discover nothing in the affidavits of Ughet to contradict [fol. 426] what was described by both Stanley and Sargent as having occurred at the conference with respect to his, Ughet's, request; that is to say, the suggestion that the bank credit be made available to him and Stanley's reply to him that he knew preceding the conference that the money was not available because the Russian Government owed the bank a sum considerably greater than the amount of the bank credit.

The third instance of notice, as I see it, was established out of the mouth of Ughet, and that is what he said in his letter of July 1, 1919, to Murray. In that Ughet said to his own counsel that because of the seizure of the bank's credits,—meaning, evidently, by the confiscation decree,—the defendant bank had refused to pay the bank credit of $5,000,000. As I see it, that is an express admission in writing by Ughet that on or prior to July 1, 1919, the bank had unequivocally repudiated liability.

The fourth instance to which I shall refer has to do with the $1,625,000 instalment of interest on the $50,000,000 Russian loan which fell due July 10, 1919. The letter of Ughet

dated July 1, 1919, addressed to Fulton, Chairman of the Protective Committee, was a request by him to seek use of the bank credit with the defendant, to meet that instalment of interest. The letter was, in substance and effect, not only an authorization to Fulton on behalf of Ughet, but a request to him, to do what in law amounts to a demand for the turning over by the defendant bank of the $5,000,000 deposit account.

Fulton made the effort in accordance with the request. [fol. 427] His letter of July 3 shows that he transmitted direct to Sabin, the president of the bank, a copy of the letter of July 1 from Ughet to him. Mr. Sabin's letter of July 10 to Mr. Fulton was a refusal to comply with that request. In the letter of July 10 of Sabin to Fulton, there was enclosed copy of a letter which Sabin had sent to Polk under date of June 9, 1919. In that letter of June 9 Sabin had set out the reasons of the bank for not turning over or rendering available the bank credit. One of those reasons, embodied in the June 9 letter, was that the bank had taken over the $5,000,000 as a credit on the larger amount owing to it by the Russian State. It was plainly claimed in the June 9 letter that the Russian Government was indebted to the bank, rather than that the bank was indebted to the Russian Government.

On July 11, 1919, Mr. Fulton sent a letter to Mr. Ughet in which he informed him of his failure in the effort which he had made, at the instance of Mr. Ughet, to procure or to get available the bank credit. It is true that it does not appear that in the July 11 letter Mr. Fulton enclosed to Mr. Ughet a copy of Mr. Sabin's letter of June 9 to Mr. Polk. As it seems to me, however,—branching off for a moment a little bit,—proof that Ughet saw the June 9 letter is needless to a decision of this case. His failure to see the letter does not change the situation. The notice he did get of the bank's refusal to pay was unequivocal,—whatever the reason; whether because the bank had taken the setoff or because of something else. It was an unambiguous refusal. Moreover, in the letter from Mr. Ughet to Mr. Murray of [fol. 428] July 1, to which I have already referred, Mr. Ughet said to Mr. Murray that the bank had refused to make the payment because of the seizure of its funds in Russia.

I cannot see, therefore, why or how, after putting together all the proof with respect to the interest instalment

in the month of July, 1919, it can possibly be said that Ughet was ignorant of the refusal or of the grounds on which the bank had refused the request of Mr. Fulton that the bank credit be rendered available to the Russian Government.

If I be correct, it follows, and from the evidence recited it follows, that prior to June 30, 1922, both the Ambassador himself and the Chargé d'Affaires knew that the bank had unequivocally repudiated liability on the deposit account.

Now what are the Government's contentions? Why does it say that there is a triable issue?

First, attention is called to the fact that at one place in his testimony Ughet said that no demand had been made on the defendant bank to pay the amount of the deposit. As I see it, however, that statement by Mr. Ughet is a mere conclusion of law. He does not deny any of the various transactions or the various conversations to which I have called attention. He does not dispute them. Nor does he say that any of the letters to which I have referred were not genuine. The mere contention that what happened did not constitute a demand, therefore, does not controvert the substantive facts, indisputably established, and is of no significance whatever. Moreover, even if it were true that Ughet made no demand, that also would not at all controvert, what is established by the proof, that the bank re- [fol. 429] pudiated liability unequivocally and gave notice of that repudiation to Ughet, as well as to Bakhmeteff.

Secondly, the Government calls attention to a statement by Ughet in his testimony that he believes that Ter-Assatouroff was mistaken in some of his statements. Up to this time I have not relied on the testimony of Ter-Assatouroff to sustain any of the findings of fact which I have made.

Thirdly, the Government says that in the testimony there is absence of precise dates and that the language employed by the witnesses is in terms of generality.

It would be rather remarkable if witnesses testifying so long after the event, as in this case, were able, without resort to documents to refresh their recollections, to fix dates with precision. That, however, does not mar or diminish the value of their testimony, because, with respect to dates, the chief concern is to find whether the occurrences were prior to 1927. The proof, in all instances, so far as I can see, does establish dates approximately and, in the way I have indicated, it is made clear that the transactions on which I have relied for my conclusions of fact all oc-

curred prior to June 30, 1922. We need not resort to other circumstances to fix precise dates, provided the proof is clear, as it is clear, as to the pertinent date.

So also it would be remarkable if witnesses could remember the exact words used in conversations which occurred years ago. I discover no lack of clarity in their statements of the essence of what those conversations were. They have furnished such clarity.

[fol. 430] With respect to the conversations, the statements of the witnesses deal with substance rather than with precise words. That, as I see it, is the sole basis for the contention of the Government that the words employed were general. Moreover, as I have already pointed out, there is documentary evidence which adequately sustains the repudiation and the notice of the repudiation to the representatives of the Russian State.

Fourthly, the Government has called attention to the fact that the bank assigned other reasons than taking the setoff as grounds for refusing payment. Well, assume that a wrong reason was assigned by the bank for its refusal. As I view it, that would not in the slightest impair its unequivocal nature. Manifestly it was unequivocal if expressed in unambiguous terms.

What the Government relies on chiefly, as I understand, is that the bank at times had employed as a reason for not making the account available to the Russian State absence of the signatures of two of the six persons whose names appeared on the list furnished to the bank at or about the time of the establishment of the account in 1916. Nevertheless, it is perfectly plain from the proof that there were several instances in which Mr. Sabin gave as a reason lack of authority of anybody to draw a check on the bank for the amount. If we assume for the time being that the communications of Mr. Sabin are properly to be construed as predicating refusal of the bank to pay on absence of the signatures of two names on the original list, yet, as I say, in the same communications, or at least some of the same communications, he further assigned the taking over of the [fol. 431] balance as an offset as another reason for refusal to pay. It does not make any difference whether lack of signatures was an additional reason or whether it was an erroneous reason. He assigned also a reason which is consistent with and, indeed, is the very reason on which

the bank insists today, namely, that the bank had taken the $5,000,000 credit as a setoff.

As I feel, therefore, I must conclude, as I do conclude, from the evidence that, without dispute, it is established:

First, that the defendant bank unequivocally repudiated liability prior to June 30, 1922.

Second, that the basis or one of the bases of that position or action taken by the defendant was that it had consolidated, as it claimed the right to consolidate, the accounts, including the accounts of what the Russian banks owed to the defendant before confiscation and the account which it owed to the Russian State; that thereby it had applied the $5,000,000 credit as a setoff; and that this action on its part left a balance actually owing to the defendant.

Third, that prior to June 30, 1922, inquiries had been made of the bank or demands had been made on it by representatives of Bakhmeteff, at his instance or request, and by Ughet himself, as well as by others acting at his instance and request, that the $5,000,000 balance be paid over to the Russian State.

[fol. 432] Fourth, that to Ughet and to all the representatives making such inquiries or demands the bank unequivocally replied that it repudiated liability.

Fifth, that these repudiations were known or communicated, at or about the time of their occurrence, and all prior to June 30, 1922, both to Bakhmeteff and to Ughet.

Sixth, that at the times when they were communicated to Bakhmeteff, as well as the times he made the several inquiries or demands through his representatives, he was recognized by our Government through its political department as the Ambassador in this country of the Russian State.

Seventh, that at some of the times, which so far as I can discover were at all the times save perhaps on one occasion, when Ughet made similar inquiries or demands of the bank himself, individually or through his representatives, he was Chargé d'Affaires and that at all the times he was the Financial Attache of the Russian State.

Eighth, that at all these times the political branch of our Government recognized the Kerensky regime as the Rus-

sian State and recognized that Bakhmeteff was its Ambassador at all the relevant times and recognized Ughet, either as Chargé d'Affaires or also as Financial Attache, as the diplomatic representative of the Russian State.

That brings us to the law questions.

Some of these are novel. Careful research of counsel has indicated that there are not available, or at least they [fol. 433] have not discovered, precise controlling decisions of them by the Supreme Court of the United States or by the Circuit Court of Appeals for the Second Circuit.

I assume, as matter of course, that in a case of this importance there will be an appeal. If so, it would be useless for me to enter into any considerable discussion of the law applicable. That would be of no assistance to either of the appellate courts. As matter of fact, I think about all that my decision of this case amounts to is that it determines who shall print the appeal papers.

Moreover, there is another feature which is worth noting. On the fact side this case carries with it no presumption of the correctness of my findings, because the evidence is in the shape of affidavits or depositions. Each appellate court in passing on the papers, therefore, will be in identically the same position as the trial court.

For the reasons given I shall not go into very much discussion of the authorities or indulge in extended comment on the propositions of law.

The first question is, was the notice of repudiation to the Russian State sufficient to start the statute running?

That notice, as I have found as a fact, was given to both Bakhmeteff and Ughet. At the time notice was given to those gentlemen they were recognized by our State Department as diplomatic representatives of the Russian State. That action by the political branch of the Government prevents the court from inquiring whether, indeed, they were proper representatives of the Russian State.

Even though there be no exact decisions on the point we [fol. 434] are now dealing with, I think plainly that answers to inquiries made by Bakhmeteff or Ughet, or made at the instance of either through his representative and communicated to him, are entirely sufficient to set the statute of limitations running. I feel that I should go contra to the Lehigh Valley case, 21 Fed. 2nd, as well as to numerous other controlling authorities, if I should fail to treat

both Bakhmeteff and Ughet as fully and completely authorized to speak and act for the Russian State. I cannot go into inquiries about the different governments or the different political factions which were in control in Russia. The courts to which I owe obedience have definitely so determined that question. I am bound by their determinations.

Inasmuch as the diplomatic representatives of the Russian State, recognized by the political branch of our Government, so far as concerns matters or property in the United States, were in a sense the Russian State, as I see it, notice to them was notice to the Russian State itself.

Moreover, although those who made inquiries of the bank were merely acting at the request of the diplomatic representatives of the Russian State, as I see it, an unequivocal response by the bank to those inquiries that it repudiated or denied liability was of itself sufficient to start the statute running. This is clearly true in principle. I incline to feel that the Tillman case, 253 N. Y., goes far to sustain, if indeed it does not squarely sustain, the holding that notice of repudiation given to a representative who had been delegated by the diplomatic representative of the foreign state to make the inquiry was enough, in and of [fol. 435] itself, to start the statute running. In other words, the delegation of authority to an agent on behalf of the diplomatic representative to make the inquiry carried with it authority on the part of that agent to receive the answer.

It is settled by controlling decisions, and is not denied, that the recognized diplomatic representative of the Russian State had authority to sue the bank in our courts for the recovery of the deposit now under consideration. We have had discussion as to whether authority to sue is a sufficient test of authority to receive notice. Research of counsel has not produced any exact decision determining the question. I incline to think that probably, however, it is enough. As our courts have established beyond peradventure the authority of either Bakhmeteff or Ughet to sue, if I be correct in believing that authority to sue carried with it likewise authority to receive notice, then, under the finding of fact I have made, notice which was given to Bakhmeteff or Ughet, during periods when they were recognized by our Government as the diplomatic respresentatives of

the Russian State, was entirely sufficient to start the statute of limitations running.

I have already mentioned the contention made with respect to absence of signatures of two out of the six whose names were contained on the list, as of the date the account was established, as authorized to draw on the account. I think that, with respect to the issues in this case, all of that is wholly immaterial.

In the first place, as has been held by the Court of Appeals of New York in the Vladikavkazsky case, 263 N. Y., [fol. 436] that such an arrangement was revocable. Moreover, as I read them, it is established by the decisions of the Federal courts that, by virtue of the fact that he was Ambassador and had the power to sue, Bakhmeteff (or, when he was in charge, Ughet) could entirely override or render valueless, as between himself and those persons whose names appeared on the list, any authorization given or attempted to be given at the time to those agents named on the list when the account was established. In other words, as I see it, authority on the part of the Ambassador completely to control the situation with respect to signatures of checks or drawing out of funds from the bank follows, as a corollary, from the indisputable authority he had to control suits in the courts of the United States, in behalf of the Russian State, for the recovery of the bank deposit.

Again, at the time the list was made up, those whose names appeared on it were employees of the Ministry of Finance. It is indisputably established that long prior to February 25, 1918, all those six had ceased to be employees of the Russian State. Whether, therefore, originally they had authority which was exclusive, or whether or not so long as they were employees the Ambassador could not properly override them, when they ceased to be employees at all, the power which had been conferred on them as employees of the Russian State necessarily ceased. It cannot be that after the authorization to them became ineffective, there was nobody authorized on behalf of the Russian State to sue, or on behalf of the Russian State to receive notice, or on behalf of the Russian State to give a good receipt. Control of the account having passed prior to February [fol. 437] 25, 1918, to the Ambassador of Russia, recognized by the political branch of our Government, under the decisions, as I construe them, he not alone had authority

to bring suit, but he had authority to receive notice and had authority to give a good receipt if the bank had yielded to his request.

Another circumstance bearing on the immateriality of the signature list is that in this case a demand was not necessary in order to start the statute of limitations running. Hence, it follows that presentation of a properly signed check cuts no figure. In my disposition of the case I have dealt only with repudiation and it is conceded, as matter of law, that if there was repudiation,—and that is shown without dispute,—and if there was due notice to the depositor,—and I have found that there was,—those two things were enough to set the statute of limitations running.

The second law question which has been discussed is whether the statute runs against a foreign sovereign.

As to that, as well as to some other matters, the research of counsel has not, as I see it, produced a ruling authority which is exactly in point. What court decisions have been produced which deal with analogous situations, however, seem to me, in principle, to show that the statute of limitations does run against a foreign sovereign.

The only reason assigned by the Supreme Court in the Saratoga Vichy case, 191 U. S., for the statute of limitations not running against the local sovereign is that public policy prevents or stands in the way. The Supreme Court gives but a single reason why this is so. The Court says the doc- [fol. 438] trine "is based upon the assumption that the officers of the government may be so busily engaged in the ordinary affairs of state as to neglect a vindication of its interests in the courts."

As I see it, that reason has no application to a foreign sovereign. It seems to me that it would be monstrous, as matter of public policy, with respect to foreign states which come within our territorial limits and carry on business transactions, including, for example, the making of deposits in banks, to declare that such banks should be held in uncertainty and be denied opportunity to set up as a defense lapse of time, after they had repudiated liability, as a defense. There may be good reason, as matter of policy, why there should be disallowance of the defense as against the local sovereign; but I fail to see any reason why the same should be true so far as concerns a foreign sovereign. On the contrary, it seems to me that there is every reason of policy why it should not be true as to a foreign sovereign

which has come into our country and made a deposit in one of our banks. Moreover, as I see it, to deny an American bank the benefit of the running of the statute of limitations as against a foreign sovereign would be to deprive the bank in its transactions, as between itself and the foreign sovereign, of an absolute right which it has as against other depositors. The tendency of that, it seems to me would certainly be contrary to the public policy of this country as announced in the Fifth Amendment.

The fourth question is, did the United States own or have a legal interest in the bank deposit?

If during the period we have had under discussion, long preceding 1933, the local sovereign had owned the account, [fol. 439] it is conceded that the statute would not have run against it; but I have heard not the slightest proof that the United States owned or had any interest whatever, that is, any legal interest, in the bank deposit, certainly prior to Ughet undertaking to transfer it in August, 1933, and probably prior to the Soviet Government undertaking to transfer it in November, 1933.

All that the proof shows is that, preceding either date officials of two of our Government's departments endeavored to assist the Russian Ambassador and the Financial Attache in getting the bank to turn over the deposit to those officials of the Russian State and that assurance had been given to those departments by the diplomatic representatives of the Russian State, then recognized by the United States, that if they got the money it would be applied towards the payment of Russian debts owing to American commercial concerns and possibly to some small extent owing to the Government of the United States. That, however, vested no ownership of the account in the United States; nor did it establish any interest, that is, any legal interest, in the account in the United States.

It may be that both the State Department and the Treasury Department were anxious to have the bank turn over the funds to the Russian diplomatic representatives recognized by the State Department. If so, as I see it, that would have been a very worthy attitude on the part of our Government officials; but all that happened was that, accepting the assurance of the Russian officials as to the use which would be made of the funds in event the Russian State could get hold of them, both the State Department and the Treasury Department were active,—perhaps more active than they

[fol. 440] otherwise would have been,—in their effort to accomplish the wishes of the diplomatic representatives of the Russian State.

I do not see any basis here for any dry trust. There was no trust at all, dry or otherwise.

The fifth question is whether Soviet recognition was retroactive to the extent of nullifying what had previously happened in regard to the bank account.

Even as to occurrences during the period when the Kerensky Government was recognized as the Russian State by the political branch of our Government, I am inclined to think that, under the authorities it has not been determined squarely yet that recognition of the Soviet Government carried back to the date of coming into being of the revolutionary government so recognized save as to acts done or property located within the territorial limits of the revolutionary government so recognized. I am inclined to think that, so far as concerns intra-Russia transactions, the doctrine of retroactivity applies. Whether or not, however, that has been authoritatively ruled, I am persuaded that it should be the law. On the other hand, in principle at least, as I read the decisions, it is established that recognition does not, under the doctrine of retroactivity, destroy a perfected or completed act or right which has occurred or come about within the territorial limits of the United States. This would seem to be particularly true as to such an act or right of an American in a transaction which he had had prior to that recognition. Otherwise put, I feel that, our Government having said to its own citizens that the Russian State was represented, and properly represented, by an Am-
[fol. 441] bassador other than the one coming from the newly-recognized revolutionary government, I think the doctrine would be monstrous if, subsequent to reliance on the political branch of our Government having publicly assured the citizens of the United States that an individual whom our Government recognized as constituting, so far as we were concerned, the foreign state, the courts of the United States, dealing with what in the meantime had happened in this country, should take it upon themselves to say that, notwithstanding that recognition during that long period, so far as concerns what happened during that period, later recognition of a different revolutionary party in

the foreign state would retroact in its effect to such an extent that it would destroy what had happened while citizens had acted on the faith of what their own government had done.

The sixth question is whether there was some interruption or suspension of the statute of limitations after it started to run. I see not a shadow of proof to support the contention that there was.

I must conclude, therefore, that prior to recognition of the Soviet Government and prior to the assignment, the six years statute of limitation had run and that it had completely barred, in favor of the bank, the cause of action sued on.

Heretofore I have denied the motion of the Government to strike out the Bakhmeteff and Ughet depositions. It follows from what I have said this morning that the motion of the defendant to dismiss the complaint, because of the bar of the statute of limitations, must be granted.

Settle order on two days' notice.

Dated, October 13, 1936.

Francis G. Caffey, United States District Judge.

[fol. 442] In United States District Court

[Title omitted]

Order Dismissing Complaint on the Merits—November 2, 1936

The above-named defendant having moved for judgment dismissing the complaint on the ground that the cause of action alleged therein did not accrue within the time limited by law for the commencement of an action thereon, and said motion duly coming on to be heard in this Court on October 5, 6, 7, 8, 9 and 13, 1936,

Now, upon reading and filing defendant's notice of the said motion dated October 21, 1935; the summons and complaint; the order of this Court dated April 30, 1935, for the taking of the depositions of Boris Bakhmeteff and Serge Ughet; the depositions of Boris Bakhmeteff and Serge Ughet both verified September 19, 1935; the affidavits of Dimitry G. Ter-Assatouroff and Nicholas S. Karinsky both verified October 7, 1935, of Harold Stanley, Charles Sar-

[fol. 443] gent and George B. Link all verified October 18, 1935, of Stuart H. Patterson and William C. Cannon both verified October 17, 1935, of Samuel W. Reyburn and Arthur B. Hatcher both verified September 25, 1935, of George J. Kenny verified October 10, 1935, of Rodney Dean verified October 15, 1935, of C. A. McKeon verified October 16, 1935, of Arthur J. Carey verified October 9, 1935, of Eugene W. Stetson and Grayson M.-P. Murphy both verified February 25, 1935, of Albert Breton verified December 24, 1935, of J. Paul Huber verified January 27, 1936, of Dimitry G. Ter-Assatouroff verified December 16, 1935, of Grayson M.-P. Murphy, John Watts and Ralph M. Carson all verified February 13, 1936, and of Conrad deSahmen verified September 14, 1936; the papers described in and annexed to said depositions and affidavits and numbered Exhibits 1 to 34 inclusive; and the assignment by Serge Ughet as Russian Financial Attache and Custodian of the property of the Russian Government in the United States to the United States executed August 25, 1933, and certified by the Department of State of the United States on December 24, 1935—all submitted by the defendant in support of the said motion;

And upon reading and filing the affidavits of Dimitry G. Ter-Assatouroff verified November 22, 1935, of Boris Brasol verified November 25, 1935, of Serge Ughet verified November 7, 1935, and December 12, 1935, of Mahlon B. Doing verified January 15, 1936, of Henry Munroe verified January 16, 1936; the papers described in and annexed to said affidavits; the order of this Court dated December 17, 1935, for the taking of the deposition of Mahlon B. Doing; [fol. 444] the letter from the Secretary of State of the United States to the Attorney General of the United States dated November 21, 1935, together with the list of documents attached to said letter and described in an annex thereto; the letter from the Acting Secretary of the Treasury to the Attorney General of the United States dated August 27, 1935; and the note from the United States Charge d'Affaires ad Interim at Moscow, U. S. S. R., to the Secretary of State of the United States, dated December 11, 1935, together with enclosures numbered 1 and 2 described therein and annexed thereto—all submitted by the lpaintiff in opposition to said motion;

And after hearing Messrs. Davis Polk Wardwell Gardiner & Reed, attorneys for the defendant (John W. Davis,

Esq. and Ralph M. Carson, Esq. of counsel), in support of said motion, and Hon. Lamar Hardy, United States Attorney (Francis H. Horan, Esq. and Leon E. Spencer, Esq., Assistant United States Attorneys, and Henry Munroe, Esq., Special Attorney, Department of Justice, of counsel), in opposition thereto, and due deliberation having been had,

It Is, upon motion of Messrs. Davis Polk Wardwell Gardiner & Reed, attorneys for the defendant, and upon filing the opinion of the Court,

Ordered that defendant's said motion to dismiss the complaint be and hereby is granted in all respects and the complaint is hereby dismissed upon the merits, and that the Clerk of this Court be and hereby is directed to enter judgment accordingly.

Francis G. Caffey, U. S. D. J.

[fol. 445] In United States District Court, Southern District of New York

L. 59, p. 80

United States of America, Plaintiff,

against

Guaranty Trust Company of New York, Defendant

Judgment Entered November 6, 1936, Dismissing Complaint

The above-named defendant having moved pursuant to the Conformity Act 28 U. S. C. § 724, the Civil Practice Act of the State of New York § 307, and Rules 107 and 120 of the Rules of Civil Practice of the State of New York for judgment dismissing the complaint on the ground that the cause of action alleged therein did not accrue within the time limited by law for the commencement of an action thereon, and said motion duly coming on to be heard in this court before Hon. Francis G. Caffey, United States District Judge, on October 5, 6, 7, 8, 9 and 13, 1936, the defendant appearing by Davis Polk Wardwell Gardiner & Reed, its attorneys, by John W. Davis, Esq. and Ralph M. Carson, Esq., and the plaintiff appearing by Hon. Lamar Hardy, United States Attorney, by Francis H. Horan, Esq., Leon E.

Spencer, Esq. and Henry Munroe, Esq., and the defendant having been heard in support of the motion to dismiss and [fol. 446] the plaintiff having been heard in opposition thereto, and the Court after due deliberation thereon having granted said motion in all respects by order signed November 2, 1936.

Now, on motion of Davis Polk Wardwell Gardiner & Reed, defendant's attorneys, it is

Ordered and Adjudged that the complaint herein is hereby dismissed upon the merits.

Charles Weiser, Clerk.

Judgment entered this 6th day of November, 1936.

[fol. 447] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING APPEAL

To the Honorable, the Judges of the United States District Court for the Southern District of New York:

United States of America, plaintiff, by its counsel, now comes and says that on the 6th day of November, 1936, this Court signed and entered its judgment in favor of the defendant and against the plaintiff dismissing the complaint on the ground that the cause of action alleged therein did not accrue within the time limited by law for the commencement of an action thereon, in which judgment and proceedings had prior thereto in said cause, certain errors were committed to the prejudice of the plaintiff, all of which more fully appear from the assignments of error filed herewith.

Wherefore, United States of America prays that an appeal may be allowed in its behalf to the United States Circuit Court of Appeals for the Second Circuit, for the cor- [fol. 448] rection of the errors so complained of and that a transcript of the record, proceedings and papers in said cause, duly authenticated, may be transmitted forthwith to the United States Circuit Court of Appeals for the Second

Circuit in accordance with the laws of the United States and the rules of this Court.

Dated, New York, N. Y., February 3, 1937.

Lamar Hardy, United States Attorney for the Southern District of New York, Attorney for Plaintiff, Office & P. O. Address, United States Court House, Foley Square, Borough of Manhattan, City of New York.

Now, on the above petition, it is ordered that the appeal as above prayed for be and the same hereby is allowed.

Dated 2/3/37.

Robert P. Patterson, U. S. D. J.

[fol. 449] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the plaintiff, above named, by its attorney, Lamar Hardy, United States Attorney for the Southern District of New York, and in connection with the appeal in the above entitled cause files the assignment of errors which it avers occurred in said cause, and upon which it will urge its appeal therein.

1. The Court erred in granting the defendant's motion for judgment dismissing the complaint on the merits.

2. The Court erred in holding that the question of limitations turns on the six year statute of New York.

3. The Court erred in deciding that the enforcement of the claim of the United States which constitutes the cause of action stated in the complaint was barred by the Statute of Limitations on November 16, 1933.

[fol. 450] 4. The Court erred in holding that the Statute of Limitations runs against a foreign sovereign.

5. The Court erred in holding that the Statute of Limitations ran against the Soviet Government and/or the State of Russia, so as to prevent the enforcement of the claim for which the within action was brought.

6. Assuming that the Statute of Limitations had begun to run prior to 1922, the Court erred in not holding that it was suspended when Boris Bakhmetev resigned as Russian Ambassador on June 30, 1922.

7. The Court erred in holding that the Statute of Limitations barred the enforcement of said claim in the hands of the United States even though the claim may have been unenforcible in the hands of the Soviet Government.

8. The Court erred in not holding that the Soviet Government became the lawful successor of prior governments of Russia as early as November, 1917.

9. The Court erred in not holding that the deposit account for the recovery of which the suit was brought became the property of the Soviet Government in November, 1917.

10. The Court erred in holding that Boris Bakhmetev or Serge Ughet were ever the representatives or agents of the Soviet Government.

[fol. 451] 11. The Court erred in holding that the defendant made an unequivocal repudiation of liability under the deposit account before November 16, 1927.

12. The Court erred in holding that notice of repudiation of liability under the deposit account was given prior to November 16, 1927 to the proper representatives so as to bind the Soviet Government.

13. The Court erred in not holding that de jure recognition will operate retroactively to revive a "remedy" under circumstances where the same was unenforcible prior to recognition.

14. The Court erred in not holding that the record presented such a conflict of material fact in substantial dispute as to raise a triable issue.

Wherefore, plaintiff prays that the said judgment of the United States District Court for the Southern District of New York in dismissing the complaint be reversed.

Dated, New York, N. Y., February 3, 1937.

Lamar Hardy, United States Attorney for the Southern District of New York, Attorney for Plaintiff, Office and Post Office Address, United States Court House, Foley Square, Borough of Manhattan, City of New York.

[fol. 452] Citation, in usual form, omitted in printing.

[fol. 453] In United States District Court

[Title omitted]

Stipulation as to Record

It is Hereby Stipulated and Agreed by and between the undersigned that the foregoing is a true transcript of the Record of the District Court of the United States for the Southern District of New York in the above entitled matter as agreed upon by the parties, and that the Clerk of the District Court may certify the same as correct.

Dated, New York, N. Y., March —, 1937.

Davis, Polk, Wardwell, Gardiner & Reed, Attorneys for Defendant-Appellee. Lamar Hardy, United States Attorney for the Southern District of New York, Attorney for Plaintiff-Appellant.

[fol. 454] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 455] UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT, OCTOBER TERM, 1936

Argued June 8, 1937. Decided Aug. 16, 1937

No. 402

UNITED STATES OF AMERICA, Plaintiff-Appellant,

v.

GUARANTY TRUST COMPANY OF NEW YORK, Defendant-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Before Manton, Swan, and Chase, Circuit Judges

From a judgment dismissing its complaint on the ground that the cause of action sued on was barred by the state statute of limitations, the plaintiff appeals. Judgment reversed.

Lamar Hardy, U. S. Atty., of New York City (Leon E. Spencer, Asst. U. S. Atty., of New York City, David E. Hudson, Sp. Asst. to the Atty. Gen., and Henry Munroe, Sp. Atty., and David McKibbin, 3d. Sp. Asst. to the U. S. Atty., both of New York City, of counsel), for the United States.

Davis, Polk, Wardwall, Gardiner & Reed, of New York City (John W. Davis, Ralph M. Carson, and J. Paschall Davis, all of New York City, of counsel), for appellee.

SWAN, Circuit Judge:

This is an action at law by the United States to recover from Guaranty Trust Company of New York the alleged balance of a deposit account. The complaint alleges that on July 15, 1916, the Government of the State of Russia opened a deposit account with the defendant in New York; that on December 12, 1917, there remained in said account $4,976,722.78, and said sum was then, and still is, owing by the defendant, together with interest thereafter accrued; that on November 16, 1933, the Government of the State of Russia assigned all its right, title, and interest in said debt

to the plaintiff; that payment thereof has been demanded by the plaintiff and refused by the defendant. Upon affidavits and depositions before answer, the defendant made a motion to dismiss the complaint under rule 107 of the Rules of Civil Practice of New York and the Conformity Act. 28 U. S. C. A. § 724. The ground of the motion was that the cause of action had accrued to the assignor more than six years prior to the assignment and, therefore, the remedy of the assignee was likewise barred by the state statute of limitations, Civil Practice Act N. Y. § 48. United States v. Buford, 3 Pet. 12, 29, 7 L. Ed. 585. Under the law of New York an unequivocal repudiation of liability by the bank would start the running of the statute as against a private litigant. Tillman v. Guaranty Trust Co., 253 N. Y. 295, 171 N. E. 61. The District Judge found that the defendant had unequivocally repudiated its liability as early as February 25, 1918. On that date the defendant closed the account, charging against it sums which were claimed to be owing to Guaranty Trust Company by the State of Russia as successor under nationalization decrees of banks in Russia whose assets had been confiscated. The District Judge also found that notice of such repudiation was received prior to June 30, 1922, by Ambassador Boris Bakhmeteff and by Mr. Serge Ughet, financial attaché and charge d'affaires, who at the time were recognized by our State Department as the accredited representatives of the State of Russia in this country. Accordingly, the defendant's motion was granted. From judgment dismissing the complaint upon the merits the plaintiff has appealed.

[fol. 456] The question whether a foreign sovereign is affected by a state statute of limitations is one upon which no direct authority has been found. It is, of course, settled law that a state statute of limitations cannot bar the United States. Davis v. Corona Coal Co., 265 U. S. 219, 44 S. Ct. 552, 68 L. Ed. 987. Whether a foreign sovereign might be barred was left open in French Republic v. Saratoga Vichy Spring Co., 191 U. S. 427, at page 437, 24 S. Ct. 145, 147, 48 L. Ed. 247, where Mr. Justice Brown remarked:

"It is said, however, that the doctrine of laches has no application to the neglect of the government to pursue trespassers upon its rights, and that the French Republic is entitled to the benefit of that rule. It is at least open to doubt whether the maxim nullum tempus, applicable to our

own government, can be invoked in behalf of a foreign government suing in our courts. The doctrine is one of public policy, and is based upon the assumption that the officers of the government may be so busily engaged in the ordinary affairs of state as to neglect a vindication of its interests in the courts. Whether this exemption can be set up by a foreign government in the prosecution of suits against our own citizens—in other words, whether the latter are not entitled to the benefit of the ordinary defenses at law—is a question which does not necessarily arise in this case, and as to which we are not called upon to express an opinion."

In United States v. Nashville, etc., R. Co., 118 U. S. 120, 125, 6 S. Ct. 1006, 1008, 30 L. Ed. 81, there is a dictum that the principle of public policy, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided, is "applicable to all governments alike." See, also, United States v. Thompson, 98 U. S. 486, 489, 490, 25 L. Ed. 194. On the other hand, in Lehigh Valley R. Co. v. State of Russia, 21 F. (2d) 396, 400 (C. C. A. 2), this court referred to the duty of Mr. Ughet to continue the suits for the State of Russia and to avoid delays "which would give rise to the bar of limitation to sue." If Mr. Ughet had authority to continue a suit on behalf of the State of Russia, as we there held, it seems clear that he would have had authority to commence a suit on behalf of the State of Russia against Guaranty Trust Company after learning of its repudiation of liability on the deposit account. But it does not follow that his failure to do so for a period of six years would operate as a bar against the foreign sovereign. The statement on the subject of limitation in the Lehigh Valley Case was purely dictum.

The defendant relies also upon Western Lunatic Asylum v. Miller, 29 W. Va. 326, 1 S. E. 740, 6 Am. St. Rep. 644, where it was held, on the assumption that the plaintiff and the Commonwealth of Virginia were one and the same, that the suit was barred by the statute of limitations of West Virginia. See, also, United States v. Brown, 247 N. Y. 211, 218, 160 N. E. 13; Commissioners of the Sinking Fund of Louisville v. Buckner, 48 F. 533, 536 (C. C. Ky.). It is argued that there can be no distinction between applying a limitation statute to another state of the Union and applying it to a foreign government, but we are not prepared to

accept this conclusion in view of the complete power over international affairs which is vested in the national government. See United States v. Belmont, 57 S. Ct. 758, 761, 81 L. Ed. —, where it is said that such power cannot be subjected to any curtailment or interference on the part of the several states. If a state Legislature should declare that a particular foreign sovereign could not sue in the courts of the state on claims over one year old, such a declaration of state policy would clearly be an invalid encroachment upon the federal power to recognize such government on the basis of equality with other foreign powers. While the matter is less clear when the state legislation treats all suitors alike, nevertheless any limitation statute, if applied to foreign governments, will impose upon the sovereign vicarious responsibility for the neglect of his agent in the United States promptly to bring suit to enforce his sovereign's right of action. The principle that a sovereign ought not to suffer from the negligence of his officers and servants cannot, we believe, be abrogated by state legislation with respect to a foreign sovereign any more than it can with respect to the United States. See Gibson v. Chouteau, 13 Wall. 92, 99, 20 L. Ed. 534. To declare that the principle is applicable to the United States but not to a foreign sovereign is to accord [fol. 457] to the latter less than full sovereign rights. Whether a foreign government shall be accorded less than full sovereign rights in the United States is a matter pertaining to international relations over which the national government has complete control. It is true that a sovereign who voluntarily comes into a local court must play the role of a litigant like any other suitor, and is subject to a properly assertable defense of set-off or counterclaim. United States v. National City Bank of New York, 83 F. (2d) 236, 238, 106 A. L. R. 1235 (C. C. A. 2). That is a matter pertaining to procedure after the sovereign has sought the aid of the court. Here the effort — to charge the sovereign with responsibility for something which occurred before he sought the aid of the court; namely, his agent's failure to seek it more promptly. The rule as to set-off is not controlling as to the defense of limitation.

In our opinion the state statute is inapplicable to a foreign sovereign and the judgment appealed from must be reversed.

Manton, Circuit Judge, concurs with opinion.

Chase, Circuit Judge, dissents.

[fol. 458] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1936

Argued June 8, 1937. Decided Aug. 16, 1937

No. 402

UNITED STATES OF AMERICA, Plaintiff-Appellant,

v.

GUARANTY TRUST COMPANY OF NEW YORK, Defendant-Appellee

Appeal from the District Court of United States for the Southern District of New York

Before Manton, Swan, and Chase, Circuit Judges

MANTON, Circuit Judge (concurring):

This is an appeal by the appellant from a judgment dismissing the complaint on the ground that the statute of limitations of the State of New York ran for more than six years prior to the instituting of the present action.

The action was started on September 22, 1934, by the United States, as assignee on November 16, 1933, of the Government of the Union of Soviet Socialist Republics against the Guaranty Trust Company of New York, for the recovery of $4,976,722.78, with interest thereon from December 12, 1917, representing the balance of a deposit account of the former Imperial Russian Government opened on July 11, 1916, with the appellee.

Appellee claimed, in affidavits in support of its motion of dismissal, that during the years 1918 and 1919 it advised Bakhmetieff and Ughet, the ambassador and financial attaché, respectively, of the Provisional Government of Russia—the so-called Kerensky Government—that it would not pay the deposit account to the Russian embassy, and this refusal was construed by the appellee as an unequivocal refusal to pay, which, in its opinion, brought into operation the six-year period of limitations, thereby barring the present action.

The appellant replied that facts were lacking from which an unequivocal refusal to pay could be inferred, and that

any communications addressed by the appellee to the representatives of the Provisional Government, subsequently to its overthrow in November, 1917, could not be binding upon the present Russian Government.

The court below held with the appellee, and ordered the suit dismissed. From such order this appeal is taken. The Civil Practice Act of New York provides (section 48):

"The following actions must be commenced within six years after the cause of action has accrued:

"1. An action upon a contract obligation or liability express or implied, except a judgment or sealed instrument."

The question for us to determine is whether the right of the Russian Government to the moneys here involved had been outlawed at the time that government executed its assignment of such moneys to the United States on November 16, 1933.

We are justified in regarding it as axiomatic in our law that a foreign sovereign, without its consent, is not amenable to suit in our courts, and that its property is not subject to their process. This principle springs from considerations of public policy which it is in the interest of one sovereign to observe toward another sovereign who, in legal contemplation at least, is entitled to claim a position of equality. There can be no submission of one sovereign nation to the laws of another, except where such submission is voluntary. Judicial compulsion among sovereign states would be a legal monstrosity which would certainly de- [fol. 459] stroy that perfect equality which is the basis of admission to membership in the international community. This sovereign immunity is so sweeping in character that it extends to all classes of actions, whether in rem or in personam. From this premise it follows that the laws of the local sovereign have no application to a foreign sovereign or his property, when such sovereign has taken no affirmative action to submit to the local jurisdiction. In other words, local laws are not made for the observance of, and the sanctions they carry cannot be construed to contemplate, foreign sovereigns. These general principles are today admitted quite generally. In the case of The Schooner Exchange v. M'Faddon, 7 Cranch, 116, 137, 3 L. Ed. 287, Chief Justice Marshall remarked:

"This full and absolute territorial jurisdiction being alike the attribute of every sovereign, and being incapable of conferring extra-territorial power, would not seem to contemplate foreign sovereigns nor their sovereign rights as its objects. One sovereign being in no respect amenable to another; and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express license, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him."

In United States v. Diekelman, 92 U. S. 520, 524, 23 L. Ed. 742, the Supreme Court said: "His own dignity, as well as the dignity of the nation he represents, prevents his appearance to answer a suit against him in the courts of another sovereignty, except in performance of his obligations, by treaty or otherwise, voluntarily assumed."

In England, the courts have taken the same position. In the leading case of The Parlement Belge, [1880] 5 Prob. Div. 197, 214, Brett, L. J., said: "The principle to be deduced from all these cases is that, as a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence and dignity of every other sovereign state, each and every one declines to exercise by means of its Courts any of its territorial jurisdiction over the person of any sovereign or ambassador of any other state, or over the public property of any state which is destined to public use, or over the property of any ambassador, though such sovereign, ambassador, or property be within its territory, and, therefore, but for the common agreement, subject to its jurisdiction."

From time to time English tribunals have had the occasion to adhere to these views. Duke of Brunswick v. King of Hanover, 6 Beav. 1, 49 Eng. Reprint, 724; Mighell v. Sultan of Johore, [1894] 1 Q. B. 149, 153; The Gagara, [1919] Prob. Div. 95 C. A.; The Porto Alexandre, [1920] Prob. Div. 30, C. A. The position of the courts in France (Spanish Government v. Cassaux, Dalloz, 1849: 1-5; Sirey, 1849: 1-81), Germany (French Shares Case, 1928, Annual Digest, 1927, 1928, Case No. 103), the Netherlands (DeBooy

v. German Reich, Annual Digest, 1919-1922, Case No. 84), and Japan (Malsuyama & Sons v. Republic of China, Annual Digest 1927-1928, Case No. 107), is the same.

More recently in United States v. Belmont, 57 S. Ct. 758, 759, 81 L. Ed. —, decided May 3, 1937, the Supreme Court, passing on the very assignment here in question, said: "and the case, therefore, presents a question of public concern, the determination of which well might involve the good faith of the United States in the eyes of a foreign government. * * * We are of opinion that no state policy can prevail aga-nst the international compact here involved."

And again: "Complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states. Compare U. S. v. Curtiss-Wright Export Corp., 299 U. S. 304, 316, 57 S. Ct. 216, 219, 81 L. Ed. —. In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes the state of New York does not exist. Within the field of its powers, whatever the United States rightfully undertakes, it necessarily has warrant to consum-ate. And when judicial authority is invoked in aid of such consummation, State [fol. 460] Constitutions, state laws, and state policies are irrelevant to the inquiry and decision."

Is the principle of immunity the same when a local resident asserts an adverse claim, as in this case, against the property of a foreign sovereign which he holds in trust, but which such sovereign does not wish to litigate in the local tribunals? It seems to be reasonably clear that, if there is no legal obligation to submit to the local jurisdiction, then there is no correlative obligation to litigate such claim in the local courts, and that, as long as there is no voluntary submission, the provisions of the local law can have no application. No local statute can be invoked to compel a foreign state to submit to a local jurisdiction. That would be inconsistent with the principle of sovereign immunity. The only recourse available in such cases to the claimant is political and not judicial. U. S. v. Diekelman, supra. While there is no direct ruling upon the question, we find this definite statement in U. S. v. Nashville, Chattanooga & St. Louis Ry. Co., 118 U. S. 120, 125, 6 S. Ct. 1006, 1008, 30 L. Ed. 81:

"It is settled beyond doubt or controversy, upon the foundation of the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided, that the United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations unless congress has clearly manifested its intention that they should be so bound." See Chesapeake & D. Canal Co. v. U. S., 250 U. S. 123, 39 S. Ct. 407, 63 L. Ed. 889.

This statement points to the conclusions that the principle of public policy enunciated in it exempts all governments alike—including foreign governments, undoubtedly—from the application of local statutes of limitations. If it is said that this principle amounts to granting to a foreign sovereign a position of privilege toward residents of the local sovereign, the answer is that such result is inevitable. The political character and extraterritorial privileges admitted in all sovereigns, including our own, necessarily place the sovereign in an exceptional position toward the individual. Local laws, we said, cannot be presumed to contemplate the regulation of the person, acts, or property of a foreign sovereign; so that, without an express engagement by such government to that end, there can be no presumption that he has agreed to submit to the local jurisdiction. Any one, in fact, who deals with a foreign sovereign must be presumed to do so with the implied understanding that the transaction is to be governed by the law of such sovereign and not by a law alien to him and to which he is under no obligation to submit. When we consider the question in the light of international comity, which is a matter between sovereign governments, we may observe that, if the national government permits a foreign sovereign to come or bring his property within our jurisdiction without any other conditions or restrictions than those of a political nature which one sovereign owes to another sovereign, then neither he nor his property lose their extraterritorial privileges and the courts are debarred from enforcing the provisions of the local law as to him or his property. To permit any action against either would be contrary to the principles of international comity. The Gagara, [1919] Prob. Div. 95 C. A. In the case of The Schooner Exchange v. M'Faddon, supra, the Supreme Court said: "A nation would justly be considered

as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice, exercise its territorial powers in a manner not consonant to the usages and received obligations of a civilized world."

In the case at bar, it does not appear that the privileges of international comity were denied by our government to the government of Russia at any time. Moreover, in international law the states of the Union pass unnoticed. They do not possess international personality. Our dealings as a nation with other nations must be conducted only through the government of the Union. It is that government which alone possesses the right and power to enter into negotiations with foreign sovereigns and to extend to them the benefits and courtesies customary under the comity practiced between nations. No local political subdivision such as a state of the Union has the right to impair the international comity which it is within the power of the national [fol. 461] government alone to grant to other governments. To permit a state to do so would be to give such state a license to interfere with the general government's conduct of its foreign relations, all of which would be constitutionally unsound and internationally dangerous. If, therefore, both the Soviet Government and its property enjoyed immunity from our laws according to our understanding of the principles and practice of international law and comity, the Soviet Government was not bound by a local statute of limitations and the United States as its assignee took the moneys transferred by such assignment free from the disabilities of the statute.

It has been decided on good authority that, since the diplomatic representative of a foreign sovereign is immune from suit in the courts of the nation to which he is accredited, the running of the statute of limitations in his favor is suspended while he retains his diplomatic status and cannot be brought into court. Masurus Bey v. Gadban et al., [1894] 2 Q. B. 352, C. A. That is to say, his political character has the effect of suspending as to him the application of all local statutes. There is nothing in the law of nations which compels him either to sue or to submit to suit. If he does not submit voluntarily, he cannot claim the benefit of a statute of limitations because he is free from the jurisdic-

tional control of the local sovereign; and the statute cannot be invoked against him because there is no law which requires him to sue. If there is no principle of law requiring him to sue or to submit to suit as the case may be, it is plain that no local statute can be evoked against or by him. If this is true as to the political representative, it is truer still as to his sovereign.

The principle of inapplicability of the statute of limitations has been invoked in arbitration claims.[1]

For these reasons I am of the opinion that the judgment should be reversed.

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[1] Collac v. Yugoslav State, May 15, 1929, Annual Digest 1929-1930, Case No. 121. Applicant, a Hungarian national, claimed restitution of certain machinery which was seized in August, 1920, by Yugoslav authorities and sold as war booty, or, *alternately*, the payment of an indemnity. Claimant contended that Yugoslav authorities acted contrary to article 250 of the Treaty of Trianon which provided that "the property, rights and interests of Hungarian nationals * * * situated in the territories which formed part of the former Austro-Hungarian Monarchy shall not be subject to retention or liquidation" in accordance with the provisions of article 232 and the annex to section IV. The respondent State invoked, inter alia, the rule of its municipal law which barred actions brought after the lapse of four years from the taking of property. The tribunal held for the claimant, saying: "Provisions of national laws relating to limitation of actions were capable of application before international tribunals only in so far as they conformed to the provisions of international law or supplemented them. Article 250 of the Treaty of Trianon invoked by the applicant fixed no period limiting the time within which the claims could be brought by virtue of its provisions."

George W. Cook Case, U. S.-Mexico Gen. Claims Com. 1927, Annual Digest 1927-1928, Case No. 174: "There is, of course, no rule of international law putting a limitation of time on diplomatic action or upon the presentation of an international claim to an international tribunal."

[fol. 462] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 23rd day of August, one thousand nine hundred and thirty-seven.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

UNITED STATES, Plaintiff-Appellant,

vs.

GUARANTY TRUST COMPANY OF NEW YORK, Defendant-Appellee

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 463] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States vs. Guaranty Trust Company of New York. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 23, 1937. William Parkin, Clerk.

[fol. 464] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 463, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States, Plaintiff-Appellant, against Guaranty Trust Company of

New York, Defendant-Appellee, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twenty-eighth day of September, in the year of our Lord one thousand nine hundred and thirty-seven, and of the Independence of the said United States the one hundred and sixty-second.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 465] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 13, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 42,047. U. S. Circuit Court of Appeals, Second Circuit. Term No. 566. Guaranty Trust Company of New York, petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed November 9, 1937. Term No. 566, O. T., 1937.